certainly do not need 300,000 troops in Europe, not after all these years. I think we can get along on considerably less, but I think first we have to bring about certain conditions with our allies there before we begin reducing our troops.

On his "tough-it-out" advice to Richard Nixon: "I told President Nixon to tough-it-out, but not in connection with Watergate. That was in connection with the war in Vietnam. Now the press interpreted that statement as relating to Watergate, but what I really said was this: 'He knows what it is to tough-it-out, he can do it.' I was talking about the war then, although when it came up I never did explain it fully."

On the Nixon transcripts: "I was wanting to do it, to play some role in the matter. After months in the hospital I was feeling pretty good and this was a chance for me to start making a contribution, to exercise that usefulness I was talking about. So I agreed to the undertaking, but only, I said, after I had checked it with Senators Ervin and Baker.

"The way it went, I was to dictate the transcript on anything that was close or controversial. I would have had full control. Anything that I didn't agree on, I just would not sign or okay it. Of course, I'm very glad that I didn't get any further into it than I did!"

On President Ford and Presidents in general: "The most important decision a new President has to make concerns his advisers, the men who are going to be closest to him. He's got to be mighty careful about the men he chooses. Because a President is so dependent on them, that's why.

"I remember the late President Kennedy saying in my presence that to him the most frightening things about the Presidency was the small percentage of items that he himself had to make an exclusive judgment on. The very small number of decisions that he could say he had made all by himself. He had to take the word, 90 or 95 percent of the time, of others. So that would be my first advice to a new President: Be careful of the men you surround yourself with. They will make you look very good or very bad or very in between."

MEMBERS OF CONGRESS ARE NOT PAWNS

Mr. HARTKE. Mr. President, remarks made recently by Gen. George S. Brown to a college audience touched off a storm of words in the press. Each morning brings a new round of attack and defense.

There is universal agreement that the General's remarks were "unfortunate" and "ill-advised." The debate has now focused on the issue of what prompted the remarks. Joseph Alsop and the team of Rowland Evans and Robert Novak have taken the position that no anti-Semitism was meant or implied in the Jewish conspiracy-type statements uttered by General Brown.

Regardless of the words he may have used, the defense argues that these were no more than unfortunate phrases of the sort we all use behind closed doors. What really motivated the general was his anguish over the state of American defense and foreign policies. Commentators who defend him differ on the details, but assure us that it was frustration and not anti-Semitism that underlies it all. Perhaps!

What is most disquieting is the apparent total contempt toward Congress. Repeatedly, the view that the American Jewish community "owns" Congress passes as an axiom; no one, at least in print, seems to question it.

Truth, as usual, is more complicated. Facts are rarely unambiguous, and even if they were they would still be subject to a multiplicity of interpretations. Yes, the American Congress has traditionally been pro-Israel. Yes, those attitudes have something to do with the existence in the United States of a substantial Jewish minority.

The implications that have been drawn from these facts is that American Jewry controls vast wealth and, more significantly, access to the media; and that therefore Members of Congress support the cause of Israel either because they fear the loss of financial and media support or, more crudely, because they fear the vengeance of the American Jewish community.

Apparently, it has not occurred to the major protagonists that a conspiracy theory is unnecessary to explain pro-Israeli tendencies. It is just possible that most Members are acting in conscience, out of a spontaneously felt accord with the efforts of Israel to sustain its right to survive. Whether one agrees or not with this view should have little bearing on either the legitimacy of the views or their expression in good faith.

It contravenes every canon of justice and morality to stigmatize all members of a group with a nondefining characteristic found in a few. I find it personally offensive that all Members of the U.S. Congress be regarded as the natural pawns of anybody who controls wealth or any other ingredient of power. Watergate notwithstanding, our ability to function effectively as a nation demands that we take a more discriminating and more rational view of our elected representatives.

A TAX EXEMPTION FOR SAVERS

Mr. HUGH SCOTT. Mr. President, several weeks ago I introduced Senate bill 4099. This bill would provide a tax exemption on interest earned on passbook savings accounts on amounts up to $10,000 held for more than 12 months. The bill as written would grant the tax benefit for savings and loan associations.

Since the time I advanced this legislation, I have received a large number of very favorable comments from savings and loan associations in Pennsylvania and other States. The letters acknowledge that this would be a valuable tool in increasing the amount of money held in savings and loans. There would clearly be an increase in money available for home mortgages. This is the kind of boost the lagging construction industry needs.

On November 9, 1974, I received a letter from Mr. Louis H. Nevins who is counsel to the National Association of Mutual Savings Banks. In Mr. Nevins' letter he outlines his view that my bill should be expanded to include mutual savings banks in the United States. He explains nearly 60 percent of savings banks' assets are invested in mortgages. There is no question the mutual savings banks are a very valuable source of mortgage money.

I am now carefully studying Mr. Nevins' recommendation. I thought it would be useful if other Senators would have the opportunity to examine the arguments he advances on behalf of the mutual savings banks of the United States.

I ask unanimous consent to print a copy of Mr. Nevins' letter on behalf of the National Association of Mutual Savings Banks in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF
MUTUAL SAVINGS BANKS,
New York, N.Y., November 8, 1974.

The Honorable HUGH SCOTT,
U.S. Senate, Washington, D.C.

DEAR SENATOR SCOTT: This letter is in regard to the bill, S. 4099, which you recently introduced, to provide a tax exemption on interest earned on passbook savings accounts. Under the terms of this bill, only interest income earned on deposits at savings and loan associations would qualify for this important savings incentive. I applaud your desire to assist the housing industry by making it more attractive for savers to place funds with one of its principal financing sources. The fact is, however, that mutual savings banks are also primarily residential mortgage lenders and, therefore, a major source of housing credit.

In Pennsylvania, for example, total assets of savings and loan assiciations are more than $12 billion while savings banks' assets are more than $7 billion, with nearly 60% of the savings banks' assets invested in mortgages. Thus, it would seem appropriate and equitable that our depositors be accorded the same benefit of tax exemption on a portion of the interest they earn.

In this connection, you probably know that the House Ways and Means Committee recently approved legislation, H.R. 16994, to provide an exemption of up to $500 for interest income earned by an individual taxpayer ($1,000 for married persons filing joint returns). It was specifically amended in committee to include deposits at savings banks. It also includes commercial banks and credit unions.

I respectfully urge that you introduce a new bill that would exempt a portion of interest earned on deposits with mutual savings banks by making the exemption available at "a mutual savings bank whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or otherwise insured pursuant to state law." You might also want to consider expanding the bill to include deposits at other types of financial institutions.

Thank you for taking our views into consideration. If we may be of any further assistance, please do not hesitate to contact our office.

Sincerely yours,

LOUIS H. NEVINS,
Director-Counsel.

FIRST AMENDMENT RIGHTS

Mr. ERVIN. Mr. President, Members of this body have been long aware of my deep concern for the preservation of civil liberties as outlined in the Bill of Rights to our Constitution. These freedoms cover many areas and among the most cherished are those outlined in the first amendment which protect free political association.

On August 29, 1974, an important judicial decision was filed by Judge James A. Coolahan of the U.S. District Court for the District of New Jersey. The case involved a high school student in New

Jersey, Lori Paton, who wrote the Socialist Workers Party in 1973 to request information for a research paper she was writing on political groups of various ideological leanings. Earlier in the year, the Director of the FBI had requested a mail cover to be placed on all incoming letters to the Socialist Workers Party. The Paton letter was detected and an immediate investigation of her was begun. After an extensive check into Lori Paton's school records and activities and into her family history and background, the Paton investigation ended with a memorandum to the special agent-in-charge which stated:

In view of the fact that the subject is a high school student who apparently contacted the national office of the SWP in New York for information for one of her courses and, due to the fact that she is not believed to be involved in subversive matters, it is recommended that this case be closed administratively.

However, Mr. President, the entire matter did not end there. The FBI continued to maintain a file on the Paton investigation that was labeled "SM-SWP", an abbreviation for "Subversive Matter-Socialist Workers Party" which identified the Paton inquiry as a part of the larger investigation conducted by the FBI into activities of this organization and its supporters.

Lord Paton sought corrective court action, basing her claims for redress on several violations of her constitutional rights. Judge Coolahan rejected plaintiff requests for financial compensation and punitive damages. In addition, her request for a declaratory judgment on the grounds that the mail cover and investigations resulting from it were in violation of the law was denied. Judge Coolahan did, however, decide in part that:

Plaintiff Paton has argued and this Court holds, that irrespective of the question of the legality of the FBI investigation, there is no legal justification for the continued possession by the FBI of the Paton file marked "SM–SWP." . . . Insofar as plaintiff Paton's files contain information which could be useful to the FBI in the exercise of its law enforcement functions and the existence of those records may at a later time become a detriment to her, this Court holds that the Paton file should be removed from the custody of the Government and destroyed.

Judge Coolahan further held that, because of the nature of the decision and the actions taken on several motions, "it is unecessary to address the—substantive question of the legality of the SWP mail cover."

Mr. President, although many questions of considerable concern remain unanswered by the Coolahan decision, I do feel that this is an important step in the fight for protection of the rights and liberties of the individual. I have seen far too many examples of files and dossiers maintained by governmental agencies that document constitutionally-protected political activity. The continued existence of these poses an affront to the liberties we prize. Rights of citizens under the first amendment are priceless. There should be no surveillance of citizens freely exercising those rights unless there can be shown probable cause that the activity in question is directly related to the commission of a crime or the likely commission of one.

FREEDOM OF INFORMATION ACT

Mr. BAYH. Mr. President, later this week the Congress will decide whether to override the President's unfortunate veto of the amendments to the Freedom of Information Act. As a member of the subcommittee which drafted this legislation as well as the Conference Committee, I was very disappointed that the President believed it necessary to exercise his veto power in this matter. This legislation was passed overwhelmingly by both Houses of Congress, and its provisions were carefully worked out to strike a reasonable balance between the competing interests involved.

I have noted in recent weeks editorials in several major newspapers in my State urging that Congress override this veto, and I am hopeful that we will do so. I ask unanimous consent that editorials from the South Bend Tribune, the Fort Wayne Journal-Gazette, and the Terre Haute Tribune be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the South Bend, (Ind.) Tribune, Oct. 23, 1974]

AN UNWISE VETO

One of the first orders of business after Congress returns from its election recess should be to override President Ford's veto of changes in the Freedom of Information Act.

The President's ill-advised veto apparently results from overwrought fears of threats to our national security. In his veto message, Mr. Ford said the bill was "unconstitutional and unworkable" and might endanger diplomatic and military secrets.

When the original Freedom of Information Act was passed in 1966, it was hailed as a milestone in the realization of the American ideal of opening government to the people it represents.

Bureaucratic types in the government soon found ways to make it relatively ineffective, however.

The changes approved almost unanimously by Congress would have shortened the time allowed government agencies to comply with requests for information from the public or press and made bureaucrats who refuse to comply with the law subject to punishment. The changes would also have allowed courts to review government claims that information sought was classified or properly confidential, and would have required the government to pay court costs and fines if it lost any legal fight over a request for information.

The ways in which excessive secrecy can be misused became manifest in the Watergate case. Making the Freedom of Information Act workable is one of the things that should be done to prevent new abuses by keeping the public's business secret.

[From the Fort Wayne Journal Gazette, Oct. 22, 1974]

RIGHT-TO-KNOW VETO

It's almost certain Congress will override Mr. Ford's veto of amendments to the Freedom of Information Act, but the President's opposition to the legislation suggests his policy of candor falls far short of a genuine commitment.

Since its passage in 1966, the Information Act has been compromised beyond recognition. Government bureaucrats, eager to protect their secrets, use a variety of loopholes in the original law to discourage citizens from prying. A popular diversion is delay that often involves long and costly lawsuits.

Prodded by the public, Congress spent three years examining the weaknesses in the Information Act, then recently passed the corrective amendments by a lopsided vote. Perhaps the most important change would make federal judges the final arbiters of what infomation should be kept secret and what should be open to public inspection.

It was this particular provision of the amendments to which Mr. Ford took the strongest exception. He insisted that federal judges aren't qualified to distinguish between national security information and other government data. He's not necessarily saying the judges can't be trusted with military secrets, but he implies they lack the prerequisite sophistication to adequately protect the national interest.

The Supreme Court, however, met this issue in its unanimous ruling last summer against former President Nixon over release of White House tapes. At that time, the high court acknowledged the executive's constitutional right to protect secrets in the national interest. But the court refused to accept the White House claim that it alone could decide when national security was involved. The dispute then fell on Judge John Sirica—a federal court judge—to resolve.

Of course, the tapes dealt with alleged criminal activity in the executive branch. And the Supreme Court could modify its ruling if a broader question were at stake that lacked prima facie evidence of illegality. Still, the court upheld the principle that judges can discern what is properly classified information.

Besides, the overwhelming congressional support of the amendments should have allayed any presidential fears that national security would be compromised. The improvements in the Information Act, securing speedy resolution of contested government documents, should make federal policy more credible and therefore, more vigorously supported by the public.

The President's surprising veto has the effect of undercutting public confidence. It was one of his first opportunities to put tangible meaning into his candor policy. Instead of applauding the amendments as an extension of the spirit of his administration, he turned the question into a test of will with Congress. Either he or the public must surely lose.

[From the Terre Haute (Ind.) Tribune Oct. 22, 1974]

MORE INFORMATION, PLEASE

The purpose of the Freedom of Information Act of 1966 was to strike down bureaucratic obstacles which keep the American people from finding out what their government is up to. The purpose of the amended act just vetoed by President Ford is to strengthen the original legislation.

Strengthening is necessary. The law has not been nearly as effective as its proponents had hoped, there have been many evasions and delays by federal agencies, and much information which should have been made public has continued to be held in the files.

Mr. Ford raised two principal objections to the amended act. He opposed the amendment's central concept of permitting the federal courts to go behind a secrecy classification and determine whether it was justified by circumstances. He also opposed the time limit provisions of this legislation. It would be burdensome, he argued, to require government agencies to decide in 10 days whether to furnish a requested document, and to give them 30 days in which to respond to lawsuits questioning a negative decision.

We do not agree with Mr. Ford on the

latter point. Ten days strikes us as a reasonable time for an agency's initial decision on meeting a request for information. If there are valid reasons for refusing to comply, the agency should be able to set them forth in a preliminary way for the courts within 30 days.

Nor do we agree that judicial review of secrecy classifications would threaten to endanger diplomatic relations or injudiciously reveal intelligence secrets. The President maintains that the courts would be deciding on document classification "in sensitive and complex areas where they have no expertise." Perhaps so, but the courts' record of responsibility suggests that in sensitive cases they would seek expert advice before ruling.

In most cases, it would be preferable to have such decisions made by the courts rather than by bureaucrats whose interest may lie more in concealment than in disclosure. The public needs more, not less, information about the workings of the government. Senate and House votes on the legislation indicate that Congress feels this very strongly. The veto may be overridden, as it should be.

A 55-MILE-PER-HOUR SPEED LIMIT SHOULD BE EXTENDED AND ENFORCED

Mr. PERCY. Mr. President, last May I introduced with Senator RANDOLPH and STAFFORD and four other cosponsors a bill to extend indefinitely the current temporary 55-mile-per-hour speed limit on the Nation's highways. If this extension is not approved, the speed limit will revert to pre-energy crisis levels next July. The desire of the Senate to extend the uniform national speed limit was expressed clearly on September 11 when we voted 85–0 to approve S. 3934, the Federal-Aid Highway Amendments of 1974.

The Senate based its support of the extension provision on the fact that the reduced speed limit demonstrably saves human lives and scarce fuel resources. As time passes, the validity of those facts is borne out. According to statistics provided by both the National Safety Council and the U.S. Department of Transportation, traffic fatalities during the month of September were 15 percent lower than in September 1973. For the first 9 months of this year, the traffic toll has been down an average of more than 20 percent each month. If this trend continues, "We can end 1974 with a saving of close to 10,000 lives compared to 1973," according to Dr. James Gregory of the National Highway Traffic Safety Administration.

And just last month, Administrator John Sawhill of the Federal Energy Administration confirmed to me that the 73 million barrels of oil we expected to save each year with the reduced speed limit still represents a valid estimate if the reduced limit is observed.

The Senate's wisdom in voting to extend the 55-mile-per-hour speed limit is further corrobrated by the fact that the majority of Americans favor the extension of the current limit. The Gallup poll reported on November 17 that 73 percent of American adults favor keeping the 55-mile-per-hour limit, an increase of 1 percent over a similar poll taken last June.

While the 55-mile-per-hour limit is not strictly observed, 68 percent of those questioned in the Gallup poll said that they drive slower now than before the limit was reduced. In addition, law enforcement officials in 12 States, according to the New York Times, have reported that the average speed of motorists on interstate highways has dropped.

Even so, widespread violation of the 55-mile-per-hour speed limit is apparent. The New York Times reports that more than 70 percent of the vehicles on the road are routinely traveling faster than 55 miles per hour. Checks in Missouri, Connecticut, and Oregon show that at least twice as many speeding tickets are being issued this year as last year. Obviously, the 55-mile-per-hour limit is not being strictly observed, despite the serious efforts of most State highway patrols to enforce it.

I believe the situation we face is clear cut. The public supports the lowered speed limit and its effectiveness in saving lives and fuel has been proved, but the current 55-mile-per-hour limit is not nearly as effective as it should be. In my view, the reason for this is primarily psychological: because the limit is temporary, the public and law enforcement groups are uncertain as to how seriously the law should be taken. I believe Congress should act to eliminate this uncertainty by demonstrating that we do indeed mean business.

The Congress first concern should be to extend the 55-mile-per-hour limit indefinitely. The Senate has already approved this measure, so it is now up to the House of Representatives to do the same. In September, I wrote to each of the members of the House Public Works Committee urging that the 55-mile-per-hour extension be incorporated into the House companion to the Federal-aid highway bill. We should urge the House Public Works Committee to finish work on its bill so that it might receive the approval of the full Congress in this current session.

Second, the Congress must act to encourage enforcement of the 55-mile per hour limit in those States where enforcement has been lax. The law now in effect, which will be extended beyond June 1975 if S. 3934 is approved, provides only that Federal highway funds can be withheld from States not posting a maximum speed limit of 55 miles per hour on their highways.

I believe Congress should now strengthen that authority so that States not enforcing the 55-miles-per-hour speed limit might lose access to Federal highway funds. The cutoff of funds would be based on objective tests of enforcement and would be applied only after due notice and consultation with individual States.

Third, Congress must urge the legislatures of the 50 States to allocate sufficient funds for police and courts for adequate enforcement. State budgets, partly as a result of the Federal revenue sharing program, are in better shape than they have been for years. I do not feel that asking the States to spend some additional money on law enforcement is unreasonable, particularly in light of the reduced cost to governments and society that results from slower driving. The National Safety Council estimates that the total cost of traffic accidents in the first 9 months of 1974 has dropped to $12.1 billion, from $13.8 billion for the first 9 months of 1973.

But the most basic action of all that we must take is to urge individuals to observe the 55-miles-per-hour limit strictly for the sake of their own welfare, their families' safety, and the country's continuing need to conserve energy. No Federal legislation and no amount of ticket-writing will yield the desired results if a sense of cooperation by individual motorists is lacking. The public has stated its preference for lower speeds; our citizens must now demonstrate their willingness to act in accordance with their beliefs. If such individual cooperation is not forthcoming, Federal laws and State enforcement policies will be meaningless. Only through a cooperative effort of individuals and State and Federal Governments can we hope to achieve our goals of 10,000 American lives and 73 million barrels of fuel saved annually. President Ford has called for such cooperation and I reiterate that request. The increased welfare of our Nation depends upon it.

JAMES M. COX, JR.

Mr. TALMADGE. Mr. President, on October 27, while Congress was in recess, James M. Cox, Jr., chairman of the board of Cox Enterprises, Inc. and Cox Broadcasting Corp., died at Miami Beach, Fla.

Mr. Cox was a close personal friend, and it was my privilege in the past 3 years to serve with him on the board of trustees of the Richard B. Russell Foundation, a foundation organized to build a memorial library to house the historically important papers of our late and beloved colleague in the Senate, Dick Russell of Georgia.

Mr. Cox was a giant in the American publishing and broadcasting industry, and he will be sorely missed by his many friends and associates.

I bring to the attention of the Senate an editorial eulogy to Mr. Cox and two news articles on his passing from the Atlanta Journal and Atlanta Constitution, and ask unanimous consent that they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Atlanta Constitution, and the Atlanta Journal, Oct. 28, 1974]

JAMES M. COX, JR.

(By Jack Tarver)

With the death of James M. Cox Jr. these newspapers have lost an able and valued leader and those of us who have had the privilege of working with him mourn the passing of a respected colleague and a responsive friend.

Modest and self-effacing, blessed with a sense of humor which enabled him to smile wryly in recognition of his own as well as his fellowman's foibles, Jim Cox roused quickly to anger only when the independence and editorial integrity of his beloved newspapers were under attack. Then he could be most fiercely protective in defense even of a liberal editorial position with which, as a lifelong conservative, he reserved the right privately to disagree.

"Our first obligation is to our readers," he reassured a recently-appointed young publisher in the early 1960's following a belligerent visit from a delegation of the city's fat cats protesting page one coverage of the then widespread sit-ins and demonstrations. "Tell those guys to go to hell. It's a newspaper's job to print the news!"

Such oft-repeated enunciation of—and unswerving dedication to—the primary role and *raison d'etre* of the newspaper in a free, democratic society inspired loyalty as well as pride-of-calling in his fellow workers.

We shall honor his memory by striving to perpetuate the principles he held dear.

[From the Atlanta Journal, Oct. 28, 1974]

JAMES M. COX, JR. DIES AT 71 IN MIAMI

James M. Cox, Jr., board chairman of the Cox Enterprises newspaper publishing firm and Cox Broadcasting Corp., died in Miami's St. Francis Hospital Sunday after a lengthy illness. He was 71.

Mr. Cox had been chairman of the two and Cox Broadcasting Corp., died in Miami's James M. Cox, a three-time governor of Ohio and the unsuccessful Democratic presidential candidate in 1920.

James M. Cox, Jr., has been described as "a man of his time, even as his father was a man of his time."

Mr. Cox lived much of his early life in the shadow of his famous father. Even so, he was a dynamic and respected publisher, broadcaster, businessman, civic leader and force in education advancements.

At the time of his death, his principal title was chairman of the board of Cox Enterprises, Inc., and Cox Broadcasting.

Cox Enterprises is the parent company of the newspaper group which includes The Atlanta Journal and the Atlanta Constitution, the Dayton Daily News, Dayton Journal Herald, the Springfield News and Sun, the Miami News and the West Palm Beach Post and Times.

Born in Dayton, Ohio, on June 27, 1903, Mr. Cox was named James McMahon Cox. His godfather was John A. McMahon, a noted Ohio lawyer and adviser to his father.

But all his life he was known as James M. Cox, Jr. and is listed that way in "Who's Who in America." It was thought, even by most of his close friends and associates, that his middle name was the same as his father's, James Middleton Cox. His intimates always called him "Jim Jr."

James M. Cox, Sr. had become publisher of The Daily News at the age of 28. He twice represented Ohio's Third District in Congress. He was elected governor of Ohio three times and was the Democratic nominee for president in 1920. He was defeated by Warren G. Harding.

It was the father, known always as "Gov. Cox," who first called his son "Jim Jr." In his autobiography, "Journey Through My Years," he referred to the younger Cox as "James M. Cox Jr., my son."

Mr. Cox never sought public office, but it was not an unfamiliar world to him. He knew several presidents, among them Franklin D. Roosevelt, his father's running mate in 1920. In 1961, 10 days before John F. Kennedy took office. Mr. Cox played golf with the President-elect at Palm Beach, Fla.

Mr. Cox met his first president at the age of six. His father, who had been elected to Congress in 1908, made his first official call on President William Howard Taft and took his son along.

Gov. Cox recalled the incident in his book:

"Taft made quite a fuss over the youngster, and the next morning the lad broke out with the measles. The question was widely discussed in the press of whether the President (a Republican) had been deliberately exposed to a Democratic infection."

When young Cox was 14, he was enrolled at Indiana's Culver Military Academy for three years. In 1922, he attended Roxbury Preparatory Academy at Cheshire, Conn., and entered Yale University in 1924. He was graduated in 1928 with a B.A. degree.

Mr. Cox got his first taste of newspaper work, and also publicity, when he was at Yale.

According to those who remember him in those days, one weekend he journeyed from New Haven to New York City. He reportedly was driving down Broadway at what several policemen considered an unseemly rate of speed. They pursued and caught up with him on the steps on his hotel.

The incident, which would have been ignored had he been anyone else, was reported by New York newspapers. It was carried on wire services and wound up in his father's newspaper, The Daily News.

It was later that same year, during summer vacation from Yale, that young Cox joined the staff of The Daily News as a cub reporter.

Like many young reporters of his day, he started on the police beat, which meant coming to work at 6:30 a.m. But he worked nearly all newspaper beats during his early days as a reporter, before he graduated from college.

The official biography which he prepared has as its first entry, under the heading business experience: "Entered newspaper work, Dayton (Ohio) Daily News, as reporter, 1929."

It was that same year that another young reporter for the paper met Mr. Cox. Fred Robbins, who has known the Cox family since the 1920s and retired in December, 1973, as the industrial editor of The Daily News, recalled the young Cox as a reporter:

"Jim Jr. liked to have a good time in those days, like anyone else that age," Robbins said. "It was a little hard to get him up in the morning, though. When he wasn't at work on time, someone would call to get him out of bed, and he would slip out of the house and down to the office without breakfast."

Mr. Cox subsequently worked in the advertising and circulation departments of the newspaper and was named general manager in 1931, when his brother-in-law, Daniel J. Mahoney Sr., left to head the Miami Daily News, which Gov. Cox had just bought.

In 1938, Mr. Cox was given the additional responsibilities of assistant publisher. Prior to that, in 1934, he had entered a field which was to lead to big growth for the Cox group: broadcasting.

Late that year, the Cox interests bought an Erie, Pa., radio station and had the license transferred to Dayton. Mr. Cox was given the job of getting the station on the air.

On Feb. 9, 1935, the station, using the call letters WHIO, began broadcasting from studios located in a building next door to The Daily News, in downtown Dayton.

It eventually culminated in a Cox broadcasting empire which to date includes five television stations, five AM and four FM radio stations and 34 wholly or partially owned cable TV systems.

James M. Cox Jr. is credited with having the vision, foresight and acute business ability that built the empire and brought about its success.

J. Leonard Reinsch, whom Mr. Cox hired as the first manager of WHIO and who later became head of all Cox Broadcasting operations, said at one time, "Probably the most impressive message I have ever heard came at the dedication of WHIO. The Governor talked about through the long watches of day and night, we must ever be conscious of our responsibility . . ."

Reinsch said, "We all believed in that, but I think it was through Jim Jr. that we've been able to live up to it.

"We've never been pushed to make a few extra dollars that would have caused us to remove some of our services. He (Mr. Cox) wanted us to run good properties, but in running good properties, he wanted us to provide service to the community and do what we could to provide leadership—in some respects, taking the community into areas that would make it a better place to live."

In June of 1942, against his father's wishes, Mr. Cox, an aviation enthusiast and a pilot, became a lieutenant in the Naval Air Corps.

Associates said that Gov. Cox was strongly against the move, partly because his son was 39 at the time. Mr. Cox served until 1945, when he was discharged as a lieutenant commander.

At that time, he plunged back into the business world, where television was getting a foothold.

Gov. Cox was reluctant to get into television, but after urging from his son, eventually agreed to gamble, and Cox interests acquired television stations, first in Dayton, then in Atlanta.

Mr. Cox took charge of those operations, with still a firm hand in the newspaper empire, which also was growing.

When Gov. Cox died on July 15, 1957, at the age of 87, Jim Jr. already had the major responsibility for seven newspapers, three radio stations and two television stations.

Cox executive Robert W. Sherman, who went to work for The Daily News as a teenager in 1928, believes that Jim Jr. was a "man for his time, as Gov. Cox was for his."

Sherman said, "I think we have gone farther, faster, under Jim Jr. You think of everything that's happened since the Governor died. . . ."

Some of the things that happened were acquisition of television stations in Pittsburgh, Charlotte, N.C., and the San Francisco-Oakland area; radio stations in Charlotte and Los Angeles.

There was the formation of CATV systems in Ohio, California, Georgia, Washington, Iowa, Vermont, Massachusetts, Texas, Florida, Pennsylvania, Michigan, Oregon, Indiana, Illinois and New York.

There were the addition of a technical publications division, embracing a dozen magazines; acquisition of a truck line and a steel warehouse, both in Georgia; the purchase of 11 automobile auctions in as many states, and the purchase of a movie company, Bing Crosby Productions.

In 1969, Mr. Cox made another publishing acquisition in Florida which included the Palm Beach Post and Times; the Palm Beach Daily News; a 47 per cent interest in the Daytona Beach Journal and News, and a monthly magazine, Palm Beach Life.

Sherman, who headed much of the operation under Mr. Cox, added, "That's the way it has gone. But, even though we have gotten big in the last 17 or 18 years, each operation has remained pretty much an individual operation. What we are, really, is a conglomerate of small businesses."

Mr. Cox, his associates agree, had an uncanny ability for picking the right man for the right job and then letting him do the job.

Jack Tarver, president of Atlanta Newspapers as well as Cox Enterprises, recalled of Mr. Cox in a recent conversation: "He was not always breathing down your neck. He is one of the best newspaper operators I have known, because when he calls you on the phone, he gets right down to the heart of things and doesn't ask a lot of damn fool questions that have nothing to do with the business at hand."

Jim Fain, who went to Dayton as editor of The Daily News in 1953, made the same point almost at the outset of a recent conversation about Mr. Cox. "He's got the fastest mind I think I ever encountered," Fain said.

Mr. Cox had a strong interest in education. In 1960 he headed a $20 million national development fund for Wittenberg University in Springfield.

Later, when he was awarded an honorary

tion will make him employable. ("Employment" includes work at home or in workshops.) A client who can afford it may be asked to pay part or all of the cost of his treatment and training. But inability to pay never blocks a disabled person from rehabilitation.

Though vocational rehabilitation doesn't help everybody, the majority frequently do achieve a marvelous change in their lives. In Ohio, for example, 54-year-old Harry Hilliard had never really held a job, had committed numerous burglaries and spent half his adult life in prison. Deciding that there must be another way to survive, he asked for help at a VR center. His "disability" was obvious: he had nothing to offer an employer. In four months under the center's guidance he earned his high-school equivalency certificate, then undertook office-work training. He now works in a university library, owns a new car and says, "I'm finally standing on my own feet."

A physically, mentally or emotionally damaged person often is overwhelmed by what the disability prevents him from doing. Successful rehabilitation, therefore, demands a shift in his point of view. Ken Adams was a construction worker when an automobile accident smashed and permanently weakened his ankles. He couldn't go back to his trade, and he had no other skills. He withdrew into a cocoon of hopelessness. Stubborn pride about asking for help kept him vegetating for four years. "I finally looked up a VR counselor, and I thank God I did," he told me. "I began growing up that day."

Adams took a ten-month course in automobile body-and-fender work, and was offered a job even before he graduated. "Learning that skill changed my life," he said. "I like my work, and I'm earning twice what I made before the accident. I'll always be able to support my family. Life once scared me. Now I enjoy it."

According to H.E.W., more than five million people are now eligible for vocational rehabilitation. The federal-state program is working with one million. Of the remaining four million, several hundred thousand are being treated by the Veterans Administration, private and public agencies, individual physicians and their own families. But most of the disabled who are eligible for aid are not receiving help.

The reasons are numerous. Many disabled don't know that the program is available. Others think they cannot be helped or have reconciled themselves to their disability and don't want help. Pride or fear prevents many from approaching a public agency. Welfare agencies, especially in the big cities, have been neglectful about exploring the potential of VR for their clients. In the job field, which is the payoff for VR, far too many employers are prejudiced against the handicapped.

The federal-state program itself has flaws. In some areas, VR executives favor "easy" clients, who can be quickly rehabilitated at a minimum cost. The quality and adequacy of services vary considerably from state to state, and the South generally is doing a better job than the wealthier North. Despite problems, the federal-state VR program has succeeded in tripling the number of disabled placed in useful work over the past decade.

Astonishingly, VR doesn't cost anything. While making life livable for the disabled, it makes money for the nation. In 1972, three out of every four persons entering the program were unemployed. Three out of four who completed the program immediately moved into moneymaking work. The program increased earning power nationwide by $800 million. While the average rehabilitative effort costs about $2100 per person, the disabled individual restored to productive work begins returning some $850 in annual taxes. In less than three years the good business of VR begins turning a profit for U.S. taxpayers.

The top benefit of VR, however, will always be its impact on the human spirit. Listen to Jerry Paine, 28, who has cerebral palsy and holds an office job: "In my mind, I'm not handicapped. All human beings have limitations. Like others, I'm doing my very best with what I've got. I've received five raises in my job. I like it, and I like the independence and manhood it has given me. I've got something to live for. And I like to think that, because I've done my job well, I've opened the door for others like me."

The nearest local VR office can generally be located by checking for "Vocational Rehabilitation" in the "State" section of your telephone directory. If the directory does not contain this listing, the address can be obtained from the Governor's office, a physician, public-health nurse, hospital social-service worker, welfare department or public employment-service office.

VETO OF THE FREEDOM OF INFORMATION ACT

(Mr. PIKE asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PIKE. Mr. Speaker, in the past several years, the American people have had their fill of secrecy in Government. They had no trouble at all communicating their attitude on this issue to the people's House, as evidenced by our ready passage of the Freedom of Information Act last March 14 by near-unanimous vote. Had our erstwhile colleague, Gerald Ford, stood among us that day it would have been difficult to believe that so consummate a Representative could have failed to get the message from the people and voted against the majority of his old colleagues, both Republican and Democrat, who overwhelmingly passed the bill.

Much has been written lately of the "Imperial Presidency" and the chilling transformation which can occur when normally down-to-Earth and accessible men are catapulted to the highest office in the land. Behind a wall of Secret Service men and fawning, overprotective aides, perhaps it is difficult for the best-intentioned men to maintain vital day-to-day contact with the people and to understand clearly what they are thinking and saying. Only this sort of isolation could have prompted President Ford to veto the Freedom of Information Act.

The consequences of that veto have been clearly spelled out in an exemplary editorial which appeared in the Long Island Press on October 22. Since I have no doubt whatsoever that it is a popular expression of the views of the people of my own district, regardless of their political affiliation, I request permission to enter it in the RECORD here, both as a prelude to my own vote which will be cast to override the veto and, hopefully, to help the President reestablish necessary contact with the real voice, that of the people.

ANOTHER PROMISE GONE ASTRAY

The 1965 Freedom of Information Act, which provided that a citizen may see any government document except for nine exempt categories—ranging from legitimate military and trade secrets to law enforcement investigatory records—did much to open doors that should never have been closed.

But, as is so often the case, some bureaucrats openly violated the new law while others wriggled through legal loopholes and used delaying tactics in the court to deny the public access to a wide range of documents that do not deserve "secret" classifications.

For example, some agencies refused to look for requested material without precise prior description and threw other roadblocks in the way of people with a right to obtain the requested information.

As a result, both Republicans and Democrats in Congress, plus professional news organizations, began a three-year study of the Federal of Information Act, seeking steps that could be taken to stop violations and plug loopholes.

This culminated in congressional hearings, followed by a bill passed recently by the House by the overwhelming vote of 349 to 2 and by a voice vote in the Senate. The legislation would give the public quicker, easier access to government documents. Rights-to-know cases would gain precedence on appeals court dockets; a 30-day time limit would be fixed for government replies to lawsuits; there would be a narrowing of agencies' power to withhold investigatory files compiled for law enforcement reasons, and agencies would be required to keep an index of documents so the public could keep track of them.

One of the best features of the amendment was the authority to federal judges to inspect classified material to determine whether the government is justified in withholding it from the public. Sadly, President Ford used this as a peg on which to hang a veto, and veto the bill he did.

The courts, the President told Congress, "do not ordinarily have the background and expertise to gauge the ramifications that a release of a document may have upon our national security." The responsibility for such decisions, he added, are constitutionally those of the President.

We thought the Supreme Court decision upholding the right of newspapers to publish the famous Pentagon Papers disposed of that argument. After all, the high court did assume to have "the background and expertise" to decide such matters.

Moreover, Mr. Ford's veto is a poor way to demonstrate the credo he proclaimed when he took office last August. He promised an "open" administration. Ironically, former President Nixon, whose "closed" administration no doubt helped inspire the Ford credo, two years ago spoke of the classification system as having "frequently served to conceal bureaucratic mistakes or to prevent embarrassment to officials and administrations."

We came to expect Mr. Nixon to say one thing and do another, but we didn't expect it of Mr. Ford. His veto, is a disappointment, and his argument in sustaining it is unacceptable.

We agree with Rep. John E. Moss, D-Calif., who worked for 11 years to get the Freedom of Information Act passed and just as hard to have it strengthened through this amendment. He says that the courts' actions "through the whole unhappy history of Watergate prove that we can place our confidence in the judicial system of this nation."

It is up to Congress to undo the harm President Ford has caused by overriding the veto. We hope this is done quickly and decisively.

TIME FOR CONFIRMATION OF MR. ROCKEFELLER

(Mr. GUDE asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. GUDE. Mr. Speaker, Senate hearings on the nomination of Nelson Rockefeller to the office of Vice President of the United States have just concluded, and the House hearings will be starting shortly. This is welcome news, but it would have been more welcome had it occurred a month or two ago. The Nation has been without a Vice President since August 9, a fact of particular significance this week when the President is out of the country.

I have long been an admirer and supporter of Mr. Rockefeller's, and I was pleased when President Ford announced the nomination. Mr. Rockefeller's qualifications aside, however, the imperative national need at this point is to have a Vice President, and that demands confirmation by House and Senate. If there are legitimate questions about the President's nomination, then they should by all means be discussed, but it would be most unfortunate to have politics played with a decision as important to the Nation's leadership as this. I insert into the RECORD at this point a recent editorial from the Washington Post on the subject of Mr. Rockefeller's nomination which I commend to my colleagues' attention:

WEALTH IS NOT INHERENTLY DISQUALIFYING

One of the threads running through the hearings and the commentary on the nomination of Nelson A. Rockefeller to be vice president is the proposition that the joining of national political power with the economic power of the Rockefeller family would be bad for the country. This proposition has been spelled out both abstractly and precisely. In its abstract form, and stripped of unnecessary rhetoric, it becomes an argument that the very rich should not be allowed to hold high political office because they bring with them a distorted view of American life. More precisely, the question becomes, as Sen. Cannon has put it, whether Mr. Rockefeller realizes the inherent risks of "the wedding of great economic and political power." In either form, it seems to us, this is a mischievous line of inquiry to the extent that it directs attention away from the real questions and diverts it toward a classical Marxist analysis of American politics in which, by definition, the holders of great wealth are, however enlightened individually, unavoidably corrupt agents of their class.

It is time, no doubt, that in some cases the holders of great wealth may not be fit to hold high public office. Their view of America may be so distorted and so narrow-minded as to make them blind to the issues the nonwealthy in the country face. Similarly, some of the poor in the country may be unfit for high public office because their economic status has distorted their vision in a different but equally disqualifying way. And the same can be said of any general class of persons—males, females, white, black, rich, poor, bankers, lawyers, soldiers and so on. There were those who felt General Eisenhower should not have been President because he possessed a "military mind," and those who distrusted Woodrow Wilson because he was a professor, and those who would have ruled out Lyndon Johnson because he was a Texan. The point is simply that it is the character and qualifications of the individual that matter most and these are not criteria that can be fairly applied on the basis of race or sex or social and economic background or professional experience, or regional origin.

Fortunately, Mr. Rockefeller chose to deal directly with the issue of his wealth in his opening statement before the Senate Rules Committee Wednesday. It now seems crystal clear to us that he understands the risks of which Sen. Cannon spoke and the arguments made on this issue, both precisely and abstractly, and he may understand them far better than most of his critics or questioners.

The real questions about wealth and economic power as they relate to the vice presidency (and the presidency) which Congress should be attempting to answer were spoken by Mr. Rockefeller himself: "Am I the kind of man who would use his wealth improperly in public office? Or, more generally and more importantly, would my family background somehow limit and blind me, so that I would not be able to see and serve the general good of all Americans?"

The answers to those questions, we believe, can only be found in Mr. Rockefeller's record. And despite all the insinuations and all the details that have been dredged up in the last three months, there is not yet one substantial bit of evidence that suggests he has used his wealth improperly or that he has been unable to see the problems of the average American. Indeed, all the evidence surfaced so far points in just the other direction. What was the purpose of the loans and gifts he made to various public officials in New York State? His testimony is that his purpose was to make it possible for the state to have the services of men it might not otherwise have been able to attract, and nothing has been produced to contradict his version. That may not be a desirable way to run a state government—and in our view it is not—but it is neither unique in American history nor on its face an improper use of wealth. It may be worth recalling that in World War II it was patriotic for others to supplement the salaries of some of those who worked for the federal government for a dollar a year.

As to Mr. Rockefeller's second question, which has to do with the proposition that the rich should not be in high political office, there is no doubt from his record as governor of New York and as a national political candidate that he is sensitive to the needs of ordinary citizens. Few governors have been as quick to respond in a constructive and creative way to public needs as he was in his 15 years in Albany.

We do not know in what direction the Senate Rules Commitee intends to proceed with all the witnesses it still plans to hear. Nor do we know what surprises the House Judiciary Committee has in store. But we do know that the continuing rounds of questions about the details of various gifts and loans and about the obviously misguided decision to publish a book on Arthur Goldberg have produced little new and nothing that, in our view, is disqualifying. We also know that the country has been without a vice president for three months now. At some point in this protracted inquiry—and that point is fast approaching—it will become appropriate to ask whether some part of the purpose of the exercise now going on is not to cripple Mr. Rockefeller as a future political candidate rather than to investigate his qualifications to be vice president.

FREEDOM OF INFORMATION ACT VETO SHOULD BE OVERRIDDEN

(Mr. GUDE asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. GUDE. Mr. Speaker, President Ford's action in vetoing the recently passed amendments to the Freedom of Information Act (H.R. 12471) is most regrettable. The legislation corrected some important defects in the original Freedom of Information Act and went a long way toward establishing once and for all the principle that the Government's business is in fact the people's business, and that the people have a right to know what their Government is doing. A most eloquent commentary on the veto and the reasons why it should be overridden appeared in the Washington Star-News of October 23, 1974. I insert it in the RECORD at this point and commend it to my colleagues' attention.

THE PEOPLE'S BUSINESS

President Ford's surprising veto of legislation to expand the public's access to information about government will, beyond much doubt, go over very poorly with the public. We expect that many Americans are sadly noting the contradiction with his promise, upon taking office, that this will be an administration "of openness and candor." In his personal performance he has brought a refreshing openness to the presidency, but in this veto he sided with the agencies that want to conduct much of the public's business in secrecy.

Astonishingly enough, that includes most agencies—not just those engaged in sensitive diplomatic and defense fields. Most of them were opposed to the strengthening amendments to the Freedom of Information Act which Ford vetoed. These were passed by Congress to remedy serious deficiencies which have shown up in the 1966 act, including one that came to attention very sharply in a Supreme Court decision last year. It turned out that the law had not empowered courts to look behind the "classified" designation which agencies place on documents. If a citizen wants information bearing this stamp, the judiciary cannot decide whether the classification is being used justifiably or capriciously. Hence the agency label prevails and access to the information is denied.

This vetoed legislation would have ended the vast coverup potential inherent in such a system by allowing federal judges to decide, in privacy, whether documents have been classified properly. Ford fears for defense and diplomatic secrets under such a provision for judicial review, but the same guarding procedures agreed upon by Congress seem adequate. He also was troubled by a proposed time limit for providing information sought by citizens or the press, and in general favored having less "administrative burden placed on the agencies . . ."

The problem is that administrative ingenuity now is applied all too often to delaying the release of requested information indefinitely, and hiding mundane facts behind labels of official secrecy. Official bumbles still can be covered up too easily by these and other methods which the 17 amendments vetoed by Ford would render largely inoperative. We think the public wants, more than ever before, to see the workings of government illuminated, and the bureaucracy can very well take on some added burden—indeed some strict accountability—for that worthwhile purpose.

Congress realized that fully, in passing this legislation with only two dissenting votes in the House and none in the Senate. With that sort of majority an override of Ford's veto—which certainly is called for—should not be too difficult when Congress returns next month.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows:

To Mr. BAFALIS (at the request of M RHODES) on account of illness.

To Mr. FOUNTAIN (at the request Mr. O'NEILL) for Monday, November

ANALYSIS OF THE PRESIDENT'S JUSTIFICATION OF HIS VETO OF THE FREEDOM OF INFORMATION ACT AMENDMENTS

Mr. CHILES. Mr. President, at the request of the Subcommittee on Administrative Practice and Procedure, U.S. Senate, the Center for Governmental Responsibility at the Holland Law Center, University of Florida, has provided the subcommittee with an analysis of the President's justification of his veto of H.R. 12471, the Freedom of Information Act amendments.

It is the center's conclusion based on their research that neither the constitutional nor the administrative reasons—the only ones given in the President's veto message, can be sustained.

I ask unanimous consent that this analysis be printed in full in the RECORD and that the enclosed editorials which support an override, from Florida newspapers, be printed in full in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ANALYSIS OF PRESIDENT FORD'S VETO OF H.R. 12471

H.R. 12471, a bill to amend Section 552 of of title 5, United States Code, known as the Freedom of Information Act, is designed to narrow the gap between the Act's original objectives and realities of current practices. However, finding the proposed changes "unconstitutional and unworkable," President Ford has vetoed the bill. The President's opposition to the bill is not, by his own implications, founded on philosophical disagreement with the substance of the Freedom of Information Act but disapproval of the procedures selected to further those objectives.

The President's objections to H.R. 12471 principally stem from provisions in the bill dealing with three areas: 1) judicial review of classification, 2) time limits for review of FDIA requests and costs for obtaining information, and 3) investigatory files.

I. REVIEW OF CLASSIFIED DOCUMENTS

A. Practices under the current legislation

The present language of exemption (b)(1) states that the provisions of the FOIA do not apply to matters that are "specifically required by Executive order to be kept secret in the interest of national defense or foreign policy." The FOIA grants jurisdiction to district courts of the United States to order the production of agency records improperly held. According to the Act, "the court shall determine the matter de novo and the burden is on the agency to sustain its action."

The import of the term *de novo* has been the focal point of concern over the application of exemption (b)(1) since the passage of the Act in 1966. The plain meaning of the term *de novo* would seem to be a grant of authority for a court to consider a claim made under the FOIA "from the beginning" and in its entirety. This plain meaning interpretation, however, encountered difficulty when an attempt was made to apply it to a situation where the Government was claiming exemption from disclosure pursuant to exemption (b)(1). The question which arose was whether the *de novo* provision, as applied to materials claimed to have been classified pursuant to an Executive order, permitted a court to review the documents in question *in camera* to determine if they did in fact come within the scope of the alleged classification. The Supreme Court found *in camera* inspection was not allowed. *Environmental Protection Agency v. Mink*, 410 U.S. 73 (1973). The substance of the Court's consideration of the language of the Act and its legislative history was that Congress did not intend for the Act to subject the executive security classification decision to judicial review.

This restriction on the review procedures applicable to exemption (b)(1) has been one of the principal subjects of criticism and suggested reform. In essence, the objection to the restricted judicial review of (b)(1) exemption claims is that such restricted review amounts to no review at all. According to *EPA v. Mink* the Government sustains its withholding of requested materials by merely offering affidavits that the materials sought have been classified pursuant to an Executive order. There is no further check on either the sincerity, or, assuming a good-faith effort, the accuracy of the classifications itself.

There is good reason for concern over the lack of review afforded these two factors. Classification abuse, chiefly through overclassification, is known to be common. To quote former Defense Secretary Laird,

Let me emphasize my conviction that the American people have a "right to know even more than has been available in the past about matters which affect their safety and security. There has been too much classification in this country. *As cited in* H.R. Rep. No. 221, 93rd Cong., 1st Sess. 40 (1973)."

Former United Nations Ambassador and Supreme Court Justice Arthur Goldberg, reflecting on the basis of his personal experience of reading and preparing thousands of classified documents, concluded that—

"75 percent of these documents should never have been classified in the first place; another 15 percent quickly outlived the need for secrecy; and only about 10 percent genuinely required restricted access over any significant period of time. *Id.* at 41."

Justice Douglas, in his dissenting opinion in *EPA*, noted the present day realities of overclassification in this light:

"Anyone who has ever been in the Executive branch knows how convenient the "Top Secret" or "Secret" stamp is, how easy it is to use, and how it covers perhaps for decades the footprints of a nervous bureaucrat or a wary executive."

It is Justice Douglas' opinion that the secrecy stamp is used to withhold information which in 99% of the cases would present no danger to national security. *Gravel v. United States*, 408 U.S. 606 (1972) dissenting opinion).

The significance of the abuse of classification procedures is intensified when no effective review of the procedures is available. The lack of any realistic review of classification procedures other than that provided by the body responsible for the initial classification results in a giant loophole by which the Act's disclosure requirements may be avoided.

B. What H.R. 12471 would do

The provisions of H.R. 12471 relating to review applicable to exemption (b)(1) are designed to tighten the presently existing loopholes created by *EPA v. Mink*. H.R. 12471 would alter two provisions of the Act in order to reach this goal. Section (a)(3), the provision dealing with judicial review, would be amended to specifically grant the court discretionary authority to "examine the contents of . . . agency records *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions . . ." Exemption (b)(1) would be amended so as to create a two-prong test. As it stands, exemption (b)(1) exempts matters "specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy." H.R. 12471 would include the phrase "and are in fact properly classified pursuant to such Executive order" so as to demand adherence to procedural as well as substantive requirements of the order. The combined effect of these changes is to bring discretionary *in camera* review of classified materials within the ambit of the court's *de novo* determination.

C. The President's objections

The President voices two major objections to H.R. 12471's provisions for dealing with review of classified documents. According to the veto message of October 17, 1974, it is the President's opinion that the bill's procedures would jeopardize military and intelligence secrets and diplomatic relations, and violate constitutional principles as well. The concern for the bill's effects on diplomatic relations and military secrets is evidently founded in a skepticism regarding the capability of courts to deal with such matters, matters for which, in the President's words, the courts "have no particular expertise." The nature of the President's constitutional objection is not as easily pinpointed. The veto message makes no reference to the exact nature of the constitutional infraction. Presumably, the constitutional principle referred to is the separation of powers doctrine.

Subsequent to his veto, the President forwarded his own amendments to H.R. 12471 to Congress. His proposals, aimed at curing the deficiencies he believes to exist in the bill as presently written, would allow *in camera* review only where a court finds, after first considerinig all attendant material, no reasonable basis to support the classification. In effect, the President's procedures would make the affidavit the first and final test of the validity of the government's claim of nondisclosure.

Court expertise

The President evidenced, in his veto message, a skepticism of the capability of courts to deal with such matters as military affairs and diplomatic relations stating the courts "have no particular expertise" in these fields.[1] The courts have, however, in other difficult and sensitive areas, managed to dispose of cases involving a thorough analysis of cases which require special expertise; for example in certain tax cases, the district courts have delved into such difficult tax issues as sections 1311–14, Mitigation of Limitations, and have been affirmed by the circuit courts.[2] The courts have also demonstrated

[1] "In my opinion, citizens urgently need relief from the tyranny of classification secrecy as practiced by the executive branch. The judiciary could give us that relief. I am confident that a Federal court would exercise good judgment about our national defense requirements in any given case. I would assume that the judge could handle any foreign policy case quite satisfactorily." *Hearings on Executive Privilege, Secrecy in Government, Freedom of Information Before the Subcomm. on Intergovernmental Relations of the Comm. of Government Operations*, 93rd Cong., 1st Sess., pt. 1, at 290 (1973). Testimony of William G. Florence, Air Force Security Analyst (Retired).

[2] The district court in *Oklahoma Gas and Electric Co.* v. *United States*, 289 F. Supp. 98 (W.D. Okla. 1968), *aff'd.* 464 F. 2d 1188 (10th Cir. 1972), stated that "the purpose of the mitigation sections is to correct tax inequities where the statute of limitations, if controlling, would serve to create a double taxation or double escape from taxation to the unjust hardship of benefit of either taxpayer or the government." These sections of the Internal Revenue Code usually only apply under unusual circumstances, and only after several theshold requirements have been met. *See Yagoda* v. *Commissioner of Internal Revenue*, 331 F. 2d 485, 488 (2nd Cir.); *cert. denied*, 379 U.S. 842 (1964); 2 *Mertens, Law of Federal Income Taxation* § 14.01 (Zimet & Stanley ed. 1967). The Second Circuit in *Benenson* v. *United States*, 385 F. 2d 26 (1967), approved the disposition regarding

the ability to deal with complex issues in the delicate area of patents and copyrights. *See, e.g., Kewanee Oil Co.* v. *Bicron Corp.*, 94 S. Ct. 1879 (1974), and the highly technical area of antitrust law. *See, e.g., Telex* v. *IBM*, 367 F. Supp. 258 (N.D. Okla. 1973). Perhaps the most salient example of courts dealing with sensitive issues and materials is the Watergate case and the handling of the White House tapes. The President's hesitancy is misplaced in this situation since federal judges, on the district court level, have demonstrated competence in handling complex and sensitive issues. They are appointed by the President himself with the advice and consent of the Senate and as such are worthy of the trust of the executive.

E. The doctrine of separation of powers

The President makes no direct identification of the constitutional principle he claims to be violated by the procedures outlined in H.R. 12471, but it is apparently the separation of powers doctrine. The President does, however, offer a hypothetical example illustrating that he believes to be the unconstitutional arrangement. The President's hypothetical involves a situation where the Secretary of Defense has reasonably determined that disclosure of a certain document would endanger our national security. As the President interprets the bill, a district judge who, upon contemplation under the FOIA, found a plaintiff's position just as reasonable, would have to order disclosure of the document. "Such a provision," according to the President, "would violate constitutional principles." 10 *Presidential Documents* 1318, Oct. 17, 1974.

The President's concern with the scope of review to be applied under H.R. 12471 is founded upon the presumption or weight to be afforded the executive's findings. Evidently, the President's opinion is that failure to proceed under a standard of review granting some presumption in favor of the executive is unconstitutional. Presumably, the rationale behind this opinion is that absent a presumption in favor of a prior determination by the executive branch, similar to the presumption of validity given to an agency under traditional principles of administrative law, the court is forced to undertake a totally independent evaluation of the validity of a certain classification. For the court to perform this function would be tantamount to substituting its judgment for that of the executive official making the initial classification—a nonjudicial function. Assuming this is indeed the reasoning behind the President's objection, the constitutional principle which requires examination is the doctrine of separation of powers.

The underlying objective of the doctrine of separation of powers is the desire to avoid autocracy. *Myers v. United States*, 272 U.S. 52, 293 (1926). To this end the doctrine serves to safeguard that degree of independence which a certain branch of the government needs in order to carry out its responsibilities. The doctrine is a necessary corollary of the specific constitutional designation of the three branches of the government. Nearly a century ago the Supreme Court observed the following necessary restraints of the Constitution:

"[It is] essential to the successful working of this system that the persons intrusted with power in any one of these branches shall not be permitted to encroach upon the powers confided to the others, but that each shall by the law of its creation be limited to the exercise of the powers appropriate to its own department and no other . . . *Kilburn v. Thompson*, 103 U.S. 168, 191 (1881)."

It has been recognized that the principle of separation of powers "was obviously not instituted with the idea that it would promote governmental efficiency. It was, on the contrary, looked to as a bulwark against tyranny." *United States v. Brown*, 381 U.S. 437 (1965). As applied to the Judiciary, it serves to interpret Article III of the Constitution as both "a grant of exclusive authority over certain areas and as a limitation upon the judiciary, a declaration that certain tasks are not to be performed by courts." *Id.*

The issue, therefore, is whether the courts are being compelled to perform a function which is properly left to another branch of the government. H.R. 12471 requires courts to perform a *de novo* review. A court undertaking such review is authorized "to examine the contents of such agency records *in camera* to determine whether such agency records or any part thereof shall be withheld under any of the exemptions set forth . . ." in the Act. Taken in context, these provisions confer to the courts the right to review an executive decision to determine its propriety—a traditionally judicial function.

The President's objection is presumably based on the argument that the courts' review function is equivalent to the initial clasification decision. The crucial point is that the specific task assigned the courts under H.R. 12471 is to establish whether agents of the Executive branch have followed the standards which the Executive branch itself has promulgated for classifying confidential materials. It is not the intention of the bill, nor does it allow, the courts to make an independent determination of whether materials should or should not be classified in the interest of national security. The fundamental task before the court is one of review, a judicial function which the Constitution has assigned exclusively to the courts.

The President attaches great significance to what he considers a lack of presumption in favor of the government's findings. It is likely that the President attributes this lack of presumption to the Act's requirements which call for *de novo* review and place the burden on the agency to sustain its action. The fact is the provisions do not necessarily remove an effective presumption in favor of the government's findings. In reality, such a presumption will most likely be the rule in the majority of cases. The courts have traditionally shown great deference to Executive determinations in matters of national defense and foreign affairs and there is nothing in H.R. 12471 which would require a change of procedure in that regard. *United States v. Curtiss-Wright*, 299 U.S. 304 (1936). The bill permits *in camera* inspection at the discretion of the court; it is not automatic. The clear legislative intent is that *in camera* inspection will occur only after the court has considered all attendant evidence and found it insufficient to sustain the government's position. To quote the conferees:

"Before the court orders *in camera* inspection, the government should be given the opportunity to establish by means of testimony or detailed affidavits that the documents are clearly exempt from disclosure."

Thus a judge might very well determine that an affidavit, asserting that requested materials have been classified pursuant to an Executive order, does itself establish the government's position. The objective of H.R. 12471 appears to be that the weight to be given evidence such as an affidavit is to be left with the court. The bill does not prevent a judge from attaching considerable weight to the fact that the government feels certain materials are within the ambit of a classification. For reasons which will be discussed presently, H.R. 12471 seeks merely to avoid a hard and fast rule which makes an affidavit conclusive evidence of the validity of the government's position.

The hypothetical proposed by the President in his veto message suggests a misconstruction of the scope of review called for under H.R. 12471. The hypothetical involves a situation where the court is comparing its own independent determination of the potential danger of a certain document to the national security with the government's determination on the matter. The procedure called for in H.R. 12471 is a process wherein the court would consider the government's determination in light of requirements outlined in an Executive order. In deciding the question the court would inevitably attach considerable significance to the government's prior determination on the matter. Such a review procedure is not inconsistent with the Act's *de novo* and burden of proof requirements. The *de novo* requirement that the court is to consider the issue in its entirety does not preclude a court from attaching whatever significance to the government's actions it finds appropriate. The burden of proof stipulation means only that the government must come forth with the evidence necessary to convince the court that the materials do indeed escape the Act's disclosure requirements. To return to the President's hypothetical, it would seem to be somewhat of an impossibility for a court to find that a classification was at the same time both reasonable and unreasonable. Were the government to show that a particular classification was made pursuant to the substantive and procedural requirements of an Executive order the court's only option under H.R. 12471 is to refuse to compel disclosure. Thus in the President's hypothetical a finding by the court that a classification made by the Secretary of Defense was indeed reasonable, as judged by the specifications in the Executive order under which the classification was made, would preclude a simultaneous conclusion that the material in question could be disclosed. If there exists a reasonable basis to classify, disclosure is unreasonable.

The scope of review which the President would apply is the equivalent of the substantial evidence rule which the courts frequently apply in reviewing agency actions. The President's procedure would permit disclosure only where a court could find no reasonable basis to support the government's classification. This procedure would also make a government affidavit attesting to the validity of a classification the equivalent of *prima facie* evidence that the government had indeed made a legitimate classification. Under this procedure, an affidavit would provide the court with a reasonable basis to support the government's classification such as to make *in camera* inspection unnecessary and inappropriate. Congress, however, had good reason for selecting a *de novo* scope of review instead of a substantial evidence approach. The lack of any record by which the court could determine whether the government had acted according to the provisions of the Executive order authorizing and prescribing the conduct of the individual involved renders the application of a substantial evidence rule difficult.

As the Supreme Court observed in *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1970).

"Review under the substantial evidence test is authorized only when the agency action is taken pursuant to a rulemaking provision of the Administrative Procedure Act itself . . . or when the agency action is based on a public adjudicatory hearing. *Id.* at 414."

To apply the substantial evidence rule to exemption (b)(1) of the FOIA would be inconsistent with the Act's objectives. In effect, such a standard would do nothing to change the present status of the exemption, and therefore would be undesirable since as we have already seen the current limitations on review of exemption (b)(1) provides a loophole for avoiding the Act's disclosure requirements. The substantial evidence ap-

relationship between the mitigation provisions of sections 1311–15 and the doctrine of equitable recoupment, made by the district judge "in his exhaustive opinion." *Id.* at 28. *See Benensen* v. *United States*, 257 F. Supp. 101 (S.D. NY 1966).

proach that the President prescribes prohibits any valid independent review and thus allows the abuses of overclassification to continue.

This lack of any meaningful check on administrative action places the Executive rather than Congress in jeopardy of violating the separation of powers doctrine. Total preclusion of judicial review makes the Executive the sole judge of its actions. This is particularly inappropriate in the immediate case since the constitutional authorization for the power which the executive is here exercising stems from the Executive and Congress.

While the Constitution designates the President as Commander in Chief of the Army and Navy, and grants him certain powers in regard to treaty making, it likewise bestows the Legislative branch with the power to declare war and raise and support armies to regulate commerce with foreign nations and to ratify treaties. The Constitution thus grants to both the Executive and Legislative branches the authority to deal in matters pertaining to military and foreign affairs. Moreover, the history of the present system of classification shows a conspicuous absence of any constitutional authority for withholding information through classification. Indeed, what is shown is the legitimacy of Congress' authority to act in this area. The onset of the present system for withholding information relevant to the national defense or foreign policy can be traced back to World War I. *See* Executive Classification of Information—Security Classification Problems Involving Exemption (b) (1) of the Freedom of Information Act (5 U.S.C. 552). H.R. Rep. No. 221, 93rd Cong., 1st Sess. (1973). The first Executive order establishing a classification system became effective in 1940 and relied upon the authority of a congressional enactment giving the President power to establish as vital certain military installations and to make unlawful the conveying of information or physical representation of these designated installations. Ex. Order No. 8381, 3 C.F.R. 634.

Since this time various orders have extended the scope of the classification system in the area of non-military affairs. Currently, classification procedures are established by Executive Order No. 11652 (37 C.F.R. 5209, 1972) and apply to "official information or material which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States" or, to use the collective term adopted in the order, "national security." It is interesting to note that the only authority for the classification system cited in the order is section (b) (1) of the Freedom of Information Act. It is clear therefore that the objectives of a classification system properly reside within the domain of both the Congress and the Executive. For one branch to completely usurp the administration of such responsibilities through the preclusion of any meaningful procedure for review run contrary to the separation of powers doctrine.

A thorough consideration of the provisions of H.R. 12471 reveals that the separation of powers doctrine is not threatened by the proposed legislation. Indeed it is the constitutionality of the procedures outlined by the President which appear suspect.

One area of possible confusion which deserves consideration is the claim of executive privilege. This claim has no application to the matter under consideration here. As has been shown, it is not the purpose of H.R. 12471 to compel disclosure of materials which in the interest of national security should properly remain classified. H.R. 12471 seeks to exercise Congress' legitimate interest in insuring that the integrity of the classification system is not destroyed through the abuse of overclassification. Additionally, Congress has the legitimate concern of maintaining to the fullest extent possible an open flow of all information pertinent to the decisions which citizens of a democracy are called upon to make. H.R. 12471 does not seek to deprive the Executive of the legitimate use of a privilege against disclosure since exemption (b) (1) is an express recognition of the possible propriety of such a privilege. H.R. 12471 aligns the privilege with principles underlying the separation of powers doctrine. The alignment procedure outlined in H.R. 12471 is the rejection, consistent with the holding of the Supreme Court, of any claim of absolute privilege. Whether or not the Executive has a legitimate privilege granting it immunity from compliance with the demands of the other branches of Government is something that only the courts can determine. What is called for is a decision whether, and to what degree, a matter has been committed by the Constitution to another branch of government. This decision "is itself a delicate exercise in constitutional interpretation, and is a responsibility of [the Supreme] Court as ultimate interpreter of the Constitution." *Baker v. Carr*, 369 U.S. 211 (1961). "Any other conclusion would be contrary to the basic concept of separation of powers and the checks and balances that flow from the scheme of a tripartite government." *United States v. Nixon*, 94 S. Ct. 3090, 3106 (1974).

Consistent with the concept of separation of powers, the provisions of H.R. 12471 place the determination of the propriety of the Executive's privilege against disclosure where it properly resides—with the courts. The United States Court of Appeals for the District of Columbia has articulated the essence of the issue with particular clarity and perception:

"If the claim of absolute privilege was recognized, its mere invocation by the President or his surrogates could deny access to all documents in all the Executive departments to all citizens and their representatives, including Congress, the courts as well as grand juries, state governments, state officials and all state subdivisions. The Freedom of Information Act could become nothing more than a legislative statement of unenforceable rights. Support for this kind of mischief simply cannot be spun from incantation of the doctrine or separation of powers. *Nixon v. Sirica*, 487 F.2d 700, 715 (1973)."

II. TIME LIMITS AND COSTS

President Ford's second objection to the FOIA amendment relates to the limitations placed on an agency's time to respond to initial requests for information and administrative appeals from initial denials. The President suggests substitution of the initial 10 day period by a 30 day limitation, and a substitution of the 10-day administrative extension period for unusual circumstances by a 15 day period. Along with these substitutions the President suggests that an agency be allowed to petition the U.S. District Court for the District of Columbia for an even further extension of these time periods if compliance is essentially impossible. This application to the court must occur prior to the expiration of the periods specified in his substitution.

Obviously, the President recognizes the need for specific guidelines on periods for agency responses—the need for which is born out by past experience. Perhaps the greatest abuse of the Freedom of Information Act has been the low priority accorded by agencies on information requests. Hearings on H.R. 5425 and 4960 Before the Foreign Operations and Government Information Subcomm. of the House Comm. on Government Operations, 93rd Cong., 1st Sess., 334 (1973). One study has shown that six month delays in processing are not uncommon and mentioned one request that remained undetermined after more than one year. Subcomm. on Administrative Practice and Procedure of the Senate Comm. on the Judiciary, Freedom of Information Act Source Book, S. Doc. No. 82, 93rd Cong., 2nd Sess. 223 (1974).

Such delays, whether intentional or not, can often amount to a de facto denial of a request. Specific, enforceable time limitations would significantly alleviate this problem, especially in light of section c(6)C of the amendment. This amendment permits a requester to treat his administrative remedies as exhausted if the time limitations are not complied with, allowing suit to be filed if desired.

President Ford's modifications of the time limits do not present so substantial an improvement over the amendment as to warrant sustaining a veto. It is true that if one totals the time periods mentioned in the two proposals, the President's presents a total of 65 working days as compared to 40 working days. A measurement of percentage increment is not possible because this total does not reflect the varying times involved in the requester framing an administrative appeal, a period during which the agency presumably continues to analyze the exempt nature of the requested materials. But simply referring to the difference in time limits fails to recognize that the amendment as it now stands provides an agency with an opportunity to request still more time within which to analyze a request if it is presented with exceptional circumstances.

If it is indeed impossible for an agency to comply with the time periods, once a complaint is filed by the requester, a district court may allot extra time to the agency and retain jurisdiction. Thus, as regards particularly sensitive, complex, or extraordinarily voluminous materials, such as the President is specifically concerned with in the case of investigatory files, an agency will not have to make a hasty or ill considered judgment.

It should be further noted here that the Congressional proposal substantially follows the guidelines suggested by the Administrative Conference in Recommendation No. 24 wherein the 10 and 20 day basic time periods were first suggested. This recommendation was made after a thorough and precise study of agency procedures in relation to the FOIA.

It is not clear that the President's proposal would result in less time, effort, or money expended by an agency, vis-a-vis the Congressional proposal. As the FOAI now stands, the U.S. District Court in the district where the complainant resides has jurisdiction over an FOAI case and would normally be the site of an original proceeding. It is true that if the complaint were filed, under the procedures of the amendment an agency would have to file its request for a time extension in that district. Under the President's procedures the agency would merely have to file its affidavits in the District of Columbia, and it would be the prospective complainant who would have to defray the costs of traveling to Washington to challenge the adequacy of the affidavits. However, under the President's proposal the agency involved would always have to draft such affidavits before the expiration of the initial time periods, whereas under the amendment's procedures the agency could inform the requester of the difficulty of the determination and suggest that he withhold suit for a period of time, save the time and effort of drafting a complaint, as well as the filing fees. If such a procedure is followed in good faith, it saves the complainant from the possibility of unnecessary suit; it saves the agency the time, effort and money of filing affidavits for extension—as it would *always* have to do under the President's proposal; and as a practical matter the whole apparatus operates in a much less cumbersome, inexpensive manner.

Ultimately the point of disagreement on time limits is one of degree. Both the President's proposal and the suggested amendment contain some time limit. Because of unnecessary extended delays, the shorter

time limit seems justified and an extension does not warrant the veto.

III. INVESTIGATORY FILES

The Presidential objections identify investigatory files as a separate problem from purported constitutional and time limit infirmities. His complaints focus on the necessity of reviewing large files on a paragraph by paragraph basis to sever the disclosable from the non-disclosable portions.

The President's message singles out investigatory files which he believes should not be subject to the amendment's command that "any reasonably segregable portion of a record shall be provided . . . after deletion of the portions which are exempt." The Presidential substitute allows the agency to classify a file as a unit without close analysis because the time limits are too stringent to allow such intensive analysis.

If investigatory files are so unique in terms of length and complexity, an agency's logistical difficulty in conducting a thorough analysis would certainly strongly influence a court to extend the time for agency analysis as is authorized by the bill. Therefore, a procedure is already available to provide for accurate and thorough analysis without empowering agencies to make conclusory opinions that would result in no disclosure of information in an investigatory file, no matter how much of it would be proper to disclose. Also, it is precisely this opportunity to exempt whole files that would give an agency incentive to commingle various information into one enormous investigatory file and then claim it to be too difficult to sift through and effectively classify all of that information.

This objection, as was the objection to the time limits, is one of degree. In light of the fact that "[t]he FOIA was not designed to increase administrative efficiency, but to guarantee the public's right to know how the government is discharging its duty to protect the public interest," *Wellford* v. *Hardin*, 444 F.2d 21,24 (1971), disclosure of severable portions of investigatory documents does not create an unreasonable burden.

CONCLUSION

None of the objections issued by the President's veto message appear to establish either that H.R. 12471 is unconstitutional or unworkable. The provision of the amendment which allows *in camera* inspection of classification determinations is not unconstitutional under the separation of powers doctrine but does provide a check on possible executive abuses of the classification system. Objections as to difficulty in culling public information properly classified in investigative files is an administrative matter similar in nature to the objection as to lengths of times for review of requests. We conclude that the administrative problems do not constitute insurmountable barriers. Time limits in the amendment accord some flexibility if needed. If those responsible for culling information from investigative files cannot reasonably meet the deadline, extensions can be granted.

The basic philosophy underlying the FOIA is consistent with the President's proclaimed support for open government. Yet experts on the current implementation agree to the need for changes to better implement that philosophy.

Our analysis also suggests that the Constitution does not demand a veto of this bill since it does not violate the separation of powers. And finally the amendments, while requiring some additional effort from officials, are not administratively unworkable.

[From the Miami News, Oct. 21, 1974]

MOST SECRECY NEEDLESS

The public should be distressed that President Ford has vetoed important amendments to the Freedom of Information Act after Congress had overwhelmingly recognized the need to further pry unwarranted secrets out of government agencies.

Mr. Ford apparently had been fed a lot of bad advice by the Justice Department and the Pentagon chiefs that the amendments would give the citizens and the news media carte blanche to invade confidential FBI and military files. But the federal courts long have given ample protection to the necessary secrets of government and there is no reason to think this would not be the case in the future.

The Freedom of Information Act, passed by Congress in 1966, says the public should have the broadest access to information about the workings of government. But the important agencies have done their best to escape compliance. Deliberately long delays in responding to requests for data have defeated the purpose of the act.

The amendments would shorten the amount of time or an agency's response, would impose penalties on officials who arbitrarily refuse to cooperate, and would require annual reports to Congress on performance.

The President promised an open administration when he assumed office last August. But if he yields to the desires of the FBI and the Defense generals for excessive secrecy, he will revert to one of the insidious traits that wrecked the Nixon administration.

Congress ought to override the veto. Learning how government conducts its business is the business of all Americans.

[From the Miami Herald, Oct. 27, 1974]

AN OVERRIDING CONCERN ON SECRECY

President Ford's proposed substitute for the amendments to the Freedom of Information Act which he vetoed Oct. 17 is, if anything, worse than no bill at all.

As J. Arthur Heise suggests in an adjoining column, the existing information act is "largely a toothless baby" which really encourages bureaucrats to clam up when it suits their fancy. It created a situation, he goes on, "akin to allowing a drunken driver to administer his own sobriety test."

Mr. Ford's substitute for the amended act, which passed the Senate 64 to 17 and the House 366 to 8, grants wide latitude and lots of lead time to those who may wish to prevent the public from learning about its own business.

For instance, the vetoed bill would give government agencies 10 days to respond to a request to furnish documents believed to be improperly classified. The Ford version would give agencies 30 days to comply plus another 15 days in some cases and the right to seek a longer delay from the courts in exceptional circumstances. In other words, plenty of time to bury the bones or forget all about it.

U.S. government files are crammed with tons of material affecting and perhaps covering up decisions made in the name of the public but without its knowledge. Some of this material goes back half a century and more.

Washington is an echo chamber for petty politics and social gossip but many of its halls are tightly shut to public information, much of which has no title to official secrecy. At the very least Congress should pass the amended Freedom of Information Act over President Ford's veto, which we fear was derived from bad advice.

[From the Miami Herald, Oct. 29, 1974]

TO LET THE SUNSHINE OUT

In a joke making the rounds a few years back, a picketer at the White House waves a sign reading "The President is a Fool" and is promptly arrested for revealing top secret information.

The anecdote makes a point. Although governmental secrecy has some legitimate uses, it is as often the refuge of fools and scoundrels who cover up their indiscretions by denying the public access to vital information.

It does not have to be that way. In Florida a tough law to bring about "government in the sunshine" is a model for other states.

At the federal level, Florida's Sen. Lawton Chiles, the citizen lobby Common Cause and several prominent persons in government and the media have been pushing for a national version of the "sunshine law" with a few changes to take into account military secrecy and foreign affairs that are not a problem at the state level.

After months of work, congressmen thought they had hammered out an acceptable compromise to guarantee public access to public records and the public's business.

The measure, watered down somewhat to meet President Ford's stated objections, passed the House 336–8 and the Senate 64–17. The chief author of the compromise, Rep. William Moorehead of Pennsylvania, noted that the bill would "provide the openness in government that President Ford has promised us" and predicted it would be signed into law.

But Gerald Ford had a secret. He vetoed the compromise measure in an ill-advised action that Washington observers blamed on the President's listening to the Pentagon's views on secrecy.

Mr. Ford's stated reasons for his veto were totally unconvincing. We trust that when Congress returns following its election recess, it will act promptly to enact the Freedom of Information Act to start letting a little sunshine illuminate the activities of the federal government.

[From the Jacksonville (Fla.) Times-Union, Oct. 24, 1974]

READDRESS SECRECY BILL SOON

It took the Congress three agonizing years to produce a government anti-secrecy act designed to let the American people know what is going on in the federal government.

It took President Ford one week to veto the measure, an amendment to the Freedom of Information Act.

The President's action is distressing unless the justification cited for it is adequate. First, it is distressing because of the acknowledged fact that there has been to much abuse by policymaking bureaucrats of the "secret" and "confidential" stamps placed on government documents.

It is distressing also because one of the foremost pledges of President Ford when he assumed the presidency was for more openness at the White House, an example that should then filter down through the rest of the Executive Branch.

The bill as it worked its way through the Congress was opposed by the Defense Department and by the State Department. They argued that diplomatic secrets and vital military secrets would be revealed as a result of the act.

Congress took these arguments into consideration and, notwithstanding, overwhelmingly adopted the bill. The vote in the House was 366–8 and the Senate vote was 64–17. Congress must have felt that the bill contained sufficient safeguards of national secrets—real secrets— as opposed to coverups—to produce those overwhelming votes for the measure.

We hailed the passage of the anti-secrecy bill with muted praise because Congress failed to act more positively with regard to openness concerning its own activities, although some progress is being made in this direction.

In his veto message, President Ford cited the diplomatic-military secrets angle and also said it was his view that the new crack-in-the-door policy enunciated by Congress

for the Executive Branch was "unconstitutional and unworkable." The President promised to send along proposals of his own to eliminate defects of unconstitutionality and unworkability that he perceives in the measure.

We are reluctant to criticize the President on this issue. We do not want to see American foreign policy undermined by the inadvertent publication of diplomatic communications; we do not want to see vital American military secrets revealed to enemies or potential enemies; we do not want to see domestic public enemies aided and abetted in their schemes to escape just punishment for crimes.

If the President is right and the bill has serious defects with regard to protecting legitimate national secrets, it is distressing that Congress, after three years work, could not have struck a better balance.

In any case, Congress should, in view of all the other pressing matters, move with all deliberate speed to readdress this question of the abuse of secrecy and confidentiality powers by various Executive Branch agencies.

[From the Palatka Daily News, Oct. 22, 1974]

MORE INFORMATION PLEASE

The purpose of the Freedom of Information Act of 1966 was to strike down bureaucratic obstacles which keep the American people from finding out what their government is up to. The purpose of the amended act just vetoed by President Ford is to strengthen the original legislation.

Strengthening is necessary. The law has not been nearly as effective as its proponents had hoped; there have been many evasions and delays by federal agencies, and much information which should have been made public has continued to be held in the files.

Mr. Ford raised two principal objections to the amended act. He opposed the amendment's central concept of permitting the federal courts to go behind a secrecy classification and determine whether it was justified by circumstances. He also opposed the time limit provisions of this legislation. It would be burdensome, he argued, to require government agencies to decide in 10 days whether to furnish a requested document, and to give them 30 days in which to respond to lawsuits questioning a negative decision.

We do not agree with Mr. Ford on the latter point. Ten days strikes us as a reasonable time for an agency's initial decision on meeting a request for information. If there are valid reasons for refusing to comply, the agency should be able to set them forth in a preliminary way for the courts within 30 days.

Nor do we agree that judicial review of secrecy classifications would threaten to endanger diplomatic relations or injudiciously reveal intelligence secrets. The President maintains that the courts would be deciding on document classification "in sensitive and complex areas where they have no expertise." Perhaps so, but the courts' record of responsibility suggests that in sensitive cases they would seek expert advice before ruling.

In most cases, it would be preferable to have such decisions made by the courts rather than by bureaucrats whose interest may lie more in concealment than in disclosure. The public needs more, no less, information about the workings of the government. Senate and House votes on the legislation indicate that Congress feels this very strongly. The veto may be overridden, as it should be.

STATEMENT OF SENATOR ROBERT C. BYRD

Mr. ROBERT C. BYRD. Mr. President, I am sending to the desk for appropriate referral, a bill to designate the Wheeling Suspension Bridge at Wheeling, W. Va., a national historic site and to assimilate the bridge into the national park system.

This bridge has a long and colorful history and has played a significant role in the development of our Nation. It was the first bridge built across the Ohio River and linked the National Road to the emerging territories of the West. It also established Wheeling as the early gateway to the West. I am told that the city of Pittsburgh went to court in an effort to prevent the bridge from being erected, and only special legislation pushed through Congress by the delegation from Virginia permitted construction to go forward.

When the Wheeling Suspension Bridge was completed in 1849, it constituted a remarkable engineering feat. At 1,010 feet in length, it was the longest bridge in the world and was the most outstanding example of suspension bridge engineering, which in those days was a revolutionary new way to build bridges.

Five years after its completion a storm swept through the Ohio Valley and the Wheeling Suspension Bridge crumbled into the Ohio River. Wheeling and the Nation were shocked. But local residents and the Wheeling and Belmont Bridge Co., owners of the span, were undaunted. They hired Johan A. Roebling of Pittsburgh to rebuild it. He did, and the bridge was opened to traffic again in 1856 at a cost of $42,000.

For nearly 120 years the Wheeling Suspension Bridge has played a vital role in the course of American history. During the Civil War, it was an indispensable passageway across the Ohio River. During World War I, it carried heavy and continuous loads of war transport trains, which bore the materials of victory to our Nation's seaports. This was a role the bridge played again during World War II.

Millions of American travelers have crossed the Wheeling Suspension Bridge as they have moved back and forth across this vast Nation. Yet, it still stands—sturdy and strong and rich with history. Although a modern new four-lane bridge was built parallel to it in the late 1960's to carry Interstate 70 across the Ohio River, the Wheeling Suspension Bridge still carries local traffic across the mighty Ohio.

Mr. President, I firmly believe that the Wheeling Suspension Bridge richly deserves to be preserved as a national historic site under the guidance and supervision of the National Park Service, and I urge my colleagues on the Interior Committee to favorably report this bill. I stand ready to work with the committee in any way that may be helpful to achieve this objective.

CONCLUSION OF MORNING BUSINESS

Mr. MANSFIELD. Mr. President, is there further morning business?

The PRESIDENT pro tempore. Is there further morning business? If not, morning business is closed.

SUPPLEMENTAL APPROPRIATIONS, 1975

The PRESIDENT pro tempore. Under the previous order, the Senate will now resume the consideration of the unfinished business, H.R. 16900, which the clerk will state.

The second assistant legislative clerk read as follows:

A bill (H.R. 16900) making supplemental appropriations for the fiscal year ending June 30, 1975, and for other purposes.

The Senate resumed the consideration of the bill.

Mr. STAFFORD. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. McCLELLAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. McCLELLAN. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDENT pro tempore. The clerk will state the amendment.

The legislative clerk read as follows:

On page 28, after line 9, insert the following new section:

"SEC. 204. Notwithstanding any other provision of law, appropriations provided in this or any other Act which would otherwise expire on June 30 of the calendar year 1976, or on such date of any subsequent calendar year, shall remain available until September 30 of each such calendar year."

Mr. McCLELLAN. Mr. President, this amendment is proposed by the administration and I see no objection to it. Therefore, I make this brief statement for the RECORD:

Mr. President, this proposed amendment, officially requested by the President and transmitted to the Senate yesterday, is contained in Senate Document 93–124. It should be characterized as a technical amendment.

The general provision makes funds that would otherwise expire on June 30 of 1976 or later years available until September 30 of each of those years. In so doing, it facilitates the transition from the present July-June fiscal year period to the October-September fiscal year period. While the transition does not occur until 1976, being able to plan on the extended fund availability authorized by the general provisions will remove a degree of uncertainty from both executive branch requests and legislative branch actions on the appropriations for the transition quarter—July 1–September 30, 1976. The transition quarter requests will be included in the 1976 budget and appropriations for the quarter will be in the regular 1976 appropriation acts.

The change in the fiscal year is required by section 501 of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Fiscal year 1976 will be the last on the July–June basis. It will be followed by a transition quarter from July 1 through September 30, 1976. Fiscal year 1977 will commence on October 1, 1976.

This change in the fiscal year period requires a number of adjustments in present laws and procedures. Some are provided for in the act itself. Section 504, for example, provides that—

Any law providing for an authorization of appropriations commencing on July 1 of a year shall, if that year is any year after 1975, be considered as meaning October 1 of that year.

The proposed general provision is a similar kind of adjustment for a later stage of the funding process. It will permit funds which would otherwise expire on June 30 of all years beginning with 1976 to remain available for obligation until September 30 of each of those years. In 1976, this will allow regular fiscal year 1976 appropriations to remain available through the transitional quarter. This will allow financial managers to make use of previously appropriated funds and thus allow smaller appropriation requests for the transitional quarter itself. In the fiscal years 1977 and beyond, the general provision will prevent previously appropriated funds from expiring three-quarters of the way through the fiscal year.

I think, Mr. President, that this amendment is absolutely essential to the orderly process of transition of the fiscal year from June 30 to June 30, to September 30 to September 30, of each year. It is, as I said in the beginning, simply technical in consequence, and I know of no objection to it.

If there is no one wishing to be heard on it, then I suggest that it be adopted.

The PRESIDENT pro tempore. The question is on agreeging to the amendment.

The amendment was agreed to.

Mr. McCLELLAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. YOUNG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCLELLAN. Mr. President, as far as I know, the bill is open to amendment and some Senators who have amendments are not here. We are waiting for someone else to be present.

I would like to proceed with the bill and take up any amendments that may be available.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. BIBLE. Mr. President, I call up my amendment which is at the desk and ask that it be stated.

The PRESIDENT pro tempore. The clerk will state the amendment.

The legislative clerk proceeded to read the amendment.

Mr. BIBLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

On page 26, between lines 7 and 8, insert the following:

BUREAU OF LAND MANAGEMENT

Management of Lands and Resources

For an additional amount for "Management of Lands and Resources," $12,400,000, to be derived by transfer from the appropriation for "Salaries and Expenses," Office of Coal Research, fiscal year 1975.

On page 26, between lines 11 and 12, insert the following:

GEOLOGICAL SURVEY

Surveys, Investigations and Research

For an additional amount for "Surveys, Investigations and Research," $2,600,000, to be derived by transfer from the appropriation for "Salaries and Expenses," Office of Coal Research, fiscal year 1975.

On page 27, between lines 5 and 6, insert the following:

RELATED AGENCIES

FEDERAL ENERGY ADMINISTRATION

Salaries and Expenses

For an additional amount for "Salaries and Expenses," $8,000,000.

Mr. BIBLE. Mr. President, my amendment is in response to late arriving supplemental budget estimates signed only this past weekend by the President. It embodies $15 million in transfer authority requested by the President for the Interior Department's Outer Continental Shelf oil and gas leasing program. And it includes $8 million of the $16 million he requested for ongoing activities of the Federal Energy Administration.

As chairman of the Appropriations Subcommittee on the Department of the Interior and Related Agencies, I scheduled a full hearing of these requests yesterday—Monday. The subcommittee took testimony from Under Secretary of the Interior John C. Whitaker and from Federal Energy Administrator John Sawhill, together with their associates. The amendment I offer today is the result of information developed at that hearing and the recommendation of the subcommittee members present. This takes the form, then, of a committee amendment although there was not time to permit the normal full committee review of these items.

Let me briefly highlight the funding proposed in my amendment.

The Interior Department request, as I noted, involved transfer authority and no new additional appropriation. The request involves $12,400,000 to the Bureau of Land Management and $2,600,000 to the Geological Survey for the conduct of additional baseline and other environmental and geologic studies in several frontier lease areas and one area deep in the Gulf of Mexico on the Nation's Outer Continental Shelf for oil and gas leasing. These funds supplement some $40 million appropriated earlier in the regular Interior appropriations bill. The Department testified that the funds are needed now so that these prelease studies can be conducted in the brief summer seasons of the northern areas and move forward for contingency lease areas. The committee determined that none of the requested funds will be used for actual lease sales. These funds will be derived from the so-called pioneer plant program of the Office of Coal Research which is deemed to be of lower priority.

The Federal Energy Administration requested $16 million in new appropriations to meet the agency's increased responsibilities under the Federal Energy Administration Act and the Energy Supply and Environmental Coordination Act, both of which were signed into law this past summer and were not anticipated in the agency's regular budget submission. The committee determined that, while some of the energy study programs and related personnel costs did appear to need additional immediate funding, portions of the request such as additional Project Independence and energy conservation studies could await the second supplemental appropriations bill when they could receive more complete congressional review. Therefore, my amendment proposes an appropriation of $8 million instead of the requested $16 million.

As I say, these supplemental estimates reached us just this week. In my opinion, they could have and should have been submitted much earlier. Because of the urgent energy issues involved, the subcommittee did schedule a special hearing so that these requests could be examined before being proposed in the pending supplemental appropriations bill.

The committee is mindful of the need to curb Federal spending during these difficult economic times, and the amounts I am proposing are being considered only because of the essential nature of the programs involved.

Additionally, I would state, Mr. President, I discussed this amendment with the distinguished chairman of the full committee, as well as the ranking member of the full committee.

I urge the adoption of the amendment.

The PRESIDENT pro tempore. Is all time yielded back?

Mr. BIBLE. I did not realize we were acting under a time limit, but I am perfectly willing to yield to the distinguished chairman of the full committee or to the ranking minority member for whatever comments they might have on this proposal.

Mr. YOUNG. Will the Senator yield?

Mr. McCLELLAN. I yield to the distinguished Senator from North Dakota.

Mr. YOUNG. Is this a budgeted amount?

Mr. BIBLE. That is absolutely correct. This is a budgeted amount. The amount requested was $16 million in the case of the FEA. The amount that we are suggesting is $8 million. In the area of the BLM and the Geological Survey, it does not take any appropriated dollars. It is simply a transfer from one fund of appropriated moneys in the regular Interior appropriation bill for a different purpose.

Mr. YOUNG. I see no reason why the amendment should not be approved.

Mr. BIBLE. Mr. President, I am prepared to yield back the balance of my time.

Mr. McCLELLAN. Mr. President, as I understand it, two of the items are transfers. They do not increase appropriations.

Mr. BIBLE. That is true.

Mr. McCLELLAN. And the other item was a request for $16 million by the budget, which the Senator recommends as an amendment which provides for only $8 million.

Mr. BIBLE. That is true.

Mr. McCLELLAN. So there is an increase of $8 million in appropriations.

Mr. BIBLE. That is the total effect of the amendment I am proposing.

Mr. McCLELLAN. I have no objection to the amendment, Mr. President.

not admitted to a college was not addressed by the amendment. However, again, a certain reading of the language would include application files. Thus, these questions remain to be resolved. It is worth noting here, though, that at least one court decision has upheld access to such files.

12. Should all college students be treated the same vis a vis the rights established by this law?

12. Response. While emotional maturity is something that many people never achieve, the rights of adult citizenships are by and large conferred upon Americans at age 18 (voting, etc.). The House-Senate conferees felt it fitting and proper to extend the rights established by the Buckley amendment to any student who is attending a post-secondary educational institution, and no compelling body of evidence or argument has yet been put forth to successfully contest that judgment.

13. While this law may be appropriate for elementary and secondary schools, colleges and universities are different and the law should not apply likewise to them.

13. Response. This argument is an extreme case of in loco parentis. How is it that these basic rights, which will very likely be established throughout the Federal Government by the end of the 93rd Congress (see S. 3418) are all right for an 18 year old high school senior, but not for a 21 year old (or an 18 year old) college student?

14. Is a right of private action created to enforce the Act or is the HEW compliance mechanism created by the Act the only means of enforcement?

14. A right of private action was intended in the Buckley amendment by reference to another part of the Senate bill. However, the Conference did not accept the complete language of the referred-to Senate provision, and the explicit right of private action is no longer in the law at this time. However, it may be interesting to note that the national PTA and the League of Women Voters are considering establishing monitoring activities to review and seek compliance with this law.

15. The applicability of Section 438(b)(4)(A) of the Act is governed by its reference to subsections (c)(1), (c)(2) and (c)(3). There are no such subsections in the Act.

15. This is simply a technical printing error caused by changes made in the amendment in the Senate which necessitated relettering the paragraphs. The reference should be subsections (b)(1), (b)(2), and (b)(3). By the same token, the last section of the law should be labeled (h), not (b).

16. The effort of locating and correcting all the applicable school records will be a severe problem for educational institutions, particularly those in higher education.

16. Response. As stated in the beginning of this memorandum, of course the change of policies and habits occasioned by this law will cause discomfort and some administrative problems. So do most new laws. But that is certainly not a serious or credible reason to postpone implementation of the law or to argue that institutions of higher education should be exempt from the law. Indeed, the objection is in itself compelling evidence of the need for the Buckley amendment. Schools don't even know what files and information on their students are floating around where and being given to whom!

On some campuses there may be as many as fifteen to twenty separate files on a given student scattered around the campus. Some school officials have felt that the law would require them to gather all these files together and review them centrally. But this is not necessitated by the law. All that is basically required is that the student be informed, if he makes an inquiry or request, of the existence and the location of these files, and that he or she be given the opportunity to review the appropriate files within forty-five days of the request. Individual offices might be advised to begin a general review of their files to see whether there are things in them which cannot be adequately justified, or which they are afraid to let the student see. The question of whether or not officials could or should destroy items in the file, or send them back to their source, after a student has sought access to his files has not yet been fully resolved, although the law seems to permit it. There is a further question here as to whether this would be in the best interests of not only the students, but also the institutions involved. The anticipated speedy passage of an amendment exempting confidential letters and statements written in the past will resolve this question.

PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS

SEC. 513. (a) Part C of the General Education Provisions Act is further amended by adding at the end thereof the following new section:

"PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS

"SEC. 438. (a)(1) No funds shall be made available under an applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy of denying, or which effectively prevents, the parents of students attending any school of such agency, or attending such institution of higher education, community college, school, preschool, or other educational institution, the right to inspect and review any and all official records, files, and data directly related to their children, including all material that is incorporated into each student's cumulative record folder, and intended for school use or to be available to parties outside the school or school system, and specifically including, but not necessarily limited to, identifying data, academic work completed, level of achievement (grades, standardized achievement test scores), attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns. Where such records or data include information on more than one student, the parents of any student shall be entitled to receive, or be informed of that part of such record or data as pertains to their child. Each recipient shall establish appropriate procedures for the granting of a request by parents for access to their child's school records within a reasonable period of time, but in no case more than forty-five days after the request has been made.

"(2) Parents shall have an opportunity for a hearing to challenge the content of their child's school records, to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein.

"(b)(1) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy of permitting the release of personally identifiable records or files (or personal information contained therein) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

"(A) other school officials, including teachers within the educational institution or local educational agency who have legitimate educational interests;

"(B) officials of other schools or school systems in which the student intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

"(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 409 of this Act), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection; and

"(D) in connection with a student's application for, or receipt of, financial aid.

"(2) No funds shall be made available under any applicable program to any State or local educational agency, any institution of higher education, any community college, any school, agency offering a preschool program, or any other educational institution which has a policy or practice of furnishing, in any form, any personally identifiable information contained in personal school records, to any persons other than those listed in subsection (b)(1) unless—

"(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

"(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

"(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That, except when collection of personally identifiable data is specifically authorized by Federal law, any data collected by such officials with respect to individual students shall not include information (including social security numbers) which would permit the personal identification of such students or their parents after the data has been collected.

"(4)(A) With respect to subsections (c)(1) and (c)(2), and (c)(3), all persons, agencies, or organizations desiring access to the records of a student shall be required to sign a written form which shall be kept permanently with the file of the student, but only for inspection by the parents or student, indicating specifically the legitimate educational or other interest that each person, agency, or organization has in seeking this information. Such form shall be available to parents and to the school official responsible for record maintenance as a means of auditing the operation of the system.

"(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

"(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized

by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

"(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education the permission or consent required of and the rights accorded to the parents of the students shall thereafter only be required of and accorded to the student.

"(e) No funds shall be made available under any applicable program unless the recipent of of such funds informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

"(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provsions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

"(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of ths section and complaints whch may be filed concerning alleged violations of this section, according to the procedures contained in section 434 and 437 of this Act.".

(b) (1) (i) The provisions of this section shall become effective ninety days after the date of enactment of section 438 of the General Education Provisions Act.

(2) (1) This section may be cited as the "Family Educational Rights and Privacy Act of 1974".

CONFERENCE REPORT EXPLANATION OF ACTION ON BUCKLEY AMENDMENT TO H.R. 69

Protection of the rights and privacy of parents and pupils.—The House bill provides that the moral or legal rights of parents shall not be usurped. In addition, the House bill provides that no child shall participate in a research or experimentation program if his parents object. The Senate amendment denies funds to institutions which deny parents the right to inspect their children's files and gives parents the right to a hearing to contest their child's school records. The Senate amendment also denies funds to institutions with policies of releasing records, without parental consent, to other than educational officials. Release of records is allowed only upon written parental consent. The Secretary is directed to adopt regulations to protect students' rights of privacy and shall enforce them through an office and review board in the Department of Health, Education, and Welfare to investigate and adjudicate violations.

The conference substitute adopts the provisions of the Senate amendment, including in the list of persons who should have the right to inspect student records those students who attend postsecondary institutions.

An exception under the conference substitute occurs in connection with a student's application for, or receipt of, financial aid. The conferees intend that this exception should allow the use of social security numbers in connection with a student's application for, or receipt of, financial aid.

The conference substitute adds that nothing in these provisions of the Senate amendment shall preclude official audits of federally supported education programs, but that data so collected shall not be personally identifiable. The conference substitute also provides that the consent and rights of the parents of a student transfer to the student at age 18 or whenever he is attending a post-secondary education institution. No action to terminate assistance for violation of these provisions of the Senate amendment shall be taken unless the Secretary finds failure to comply, and that compliance cannot be secured by voluntary means.

The conference substitute also adopts the provisions of the House bill relating to protection of parental and pupil rights, with amendments. The conference substitute provides that all instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by parents or guardians.

In approving this provision concerning the privacy of information about students, the conferees are very concerned to assure that requests for information associated with evaluations of Federal education programs do not invade the privacy of students or pose any threat of psychological damage to them. At the same time, the amendment is not meant to deny the Federal government the information it needs to carry out the evaluations, as is clear from the sections of the amendment which give the Comptroller General and the Secretary of HEW access to otherwise private information about students. The need to protect students' rights must be balanced against legitimate Federal needs for information.

Under the amendment, an educational agency would have to administer a Federal test or project unless the anticipated invasion of privacy or potential harm was determined to be real and significant, as corroborated by a generally accepted body of opinion within the psychological and mental health professions. In short, the amendment is intended to protect the legitimate rights of students to be free from unwarranted intrusions; it is not intended to provide a blanket and automatic justification for a school system's refusal to administer achievement tests and related instruments necessary to the evaluation of an applicable program.

VETO REVEALS WATERGATE BLIND SPOT

Mr. CRANSTON. Mr. President, President Ford's veto of new amendments to strengthen the Freedom of Information Act reveals a second blind spot in his failure to learn the basic lessons of Watergate.

President Ford seemed to have missed the point of the Watergate trials when he pardoned former President Nixon before the legal process was allowed to run its full course.

That was an unpardonable pardon. Our laws must apply equally to each and all of us, including Presidents and former Presidents.

President Ford's ill-advised veto of the Freedom of Information Act amendments is further evidence that he has not grasped still another lesson of Watergate—the dangers of undue secrecy in Government.

The Watergate disclosure showed how public officials and Government bureaucrats try to cover up mistakes, misjudgments and even illegal acts under the cloak of "national security."

Those people were more interested in job security than in national security. They were more concerned about saving their own necks than about safeguarding the Nation.

The President's veto threatens to perpetuate the Nixon style of letting Government bureaucrats manipulate the public by deceiving the press.

We are all aware of recent efforts by administration officials—especially those at the Pentagon, the State Department, the Treasury, and the Office of Management and Budget—to clamp down on so-called "premature" information to the press.

The Freedom of Information Act amendments, which Congress passed earlier this year are designed to broaden public access to Government documents.

We want to speed up the process of getting the Government to respond to legitimate requests for information by members of the public and the press.

Under present procedures, for example, it took 13 months before the Tax Reform Research Group was able to get released to the public earlier this week 41 documents showing how the Internal Revenue Service's Special Services Staff investigated dissident groups.

The amendments also provide for judicial review of disputes over what information could be made public.

This is in keeping with the American tradition of having disagreements settled by a third party—the courts.

I supported the new legislation because I believe in the freest possible flow of information to the people about what their government is doing, and why. The people must have access to the truth if they are to govern themselves intelligently and to prevent people in power from abusing the power.

The legislation has built-in safeguards against the disclosure of classified information that might endanger national security.

The way the President wants the bill to read, a judge would have to assume that a classified document was, and remains, properly classified. If the Government gives the judge a "reasonable" explanation why the document should not be made public, the judge must accept the explanation without looking at the document himself and forming his own opinion.

Only if the Government fails to give this "reasonable" explanation, could the court decide whether the document should be made public.

Under the amendments in the vetoed bill, our courts, not our bureaucrats, will have the final say as to what information can legitimately be kept secret without violating the basic right of a democratic people to know what is going on in their Government.

Arguments over declassifying materials could be conducted privately in the judge's chambers, and if the Government did not like a judge's ruling, it could always of course appeal to a higher court.

our firm and clear policy toward that crime. By giving its advice and consent to my ratification of this convention, which I urge, the Senate of the United States will demonstrate that the United States is prepared to take effective action on its part to contribute to the establishment of principles of law and justice.

Political as well as social interest groups have overwhelmingly supported the legislation. Prior to the adoption of the genocide convention, 166 organizations, representing a quarter of a billion people all over the world, appealed to the United Nations to outlaw mass murder.

Likewise, in the United States, scores of American organizations have appealed to the Senate to ratify the Convention. Among these diverse organizations, are the AFL–CIO, UAW, National Council of Churches, National Catholic Conference for Interracial Justice, Synagogue Council of America, American Civil Liberties Union, National Association for the Advancement of Colored People, Leadership Conference on Civil Rights, General Federation of Women's Clubs, and the American Association of University Women.

In the interest of the millions of Americans represented by this cross-section of organizations, as well as the hundreds of millions more around the world who support this treaty, and in the interest of overall human rights, I appeal to my colleagues for ratification without delay of the Genocide Convention Accords of 1949.

THE PRESIDENT'S VETO OF THE FREEDOM OF INFORMATION ACT AMENDMENTS

Mr. MUSKIE. Mr. President, this week, Congress will vote on one of the most important questions pending during this post-election session—the President's veto of the amendments to the Freedom of Information Act, H.R. 12471.

On the surface of the issue, there are a number of points on which the President and the Congress are at odds. The President's veto message would have us believe that all these points were of equal concern to the executive branch.

But beneath all the rhetoric, there is only one issue at stake—and that issue goes to the very heart of what this legislation is all about.

The provision of H.R. 12471 in question is section 2(a), providing for a process of judicial review in cases where classification of Government documents is challenged in the courts. In such cases, the legislation provides for in camera review of the documents in question by a Federal judge to determine whether or not the documents were, in fact, properly classified.

The President has called this provision unconstitutional.

As a lawyer who thinks he knows something about the Constitution, I found this charge puzzling, particularly since the President has not taken issue with the concept of judicial review, but only with the standard to be used.

To clarify the question in my own mind, I sought the advice of one of the Nation's most respected constitutional experts. Prof. Philip Kurland, of the University of Chicago School of Law. I would like to share his response with my colleagues now, for it should be helpful to us all in weighing our vote on this issue.

The President's charge that H.R. 12471 is unconstitutional is serious indeed.

But Professor Kurland's lucid analysis has convinced me that it is a charge without foundation.

I ask unanimous consent that Professor Kurland's letter be printed in the RECORD, and I urge my colleagues' serious consideration of its arguments.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

UNIVERSITY OF CHICAGO,
Chicago, Ill., Nov. 15, 1974.

Senator EDMUND P. MUSKIE,
U.S. Senate, Committee on Government Operations, Washington, D.C.

DEAR SENATOR: I have been asked, by Mr. Davidson, the Counsel to your subcommittee, to give you an opinion on the constitutionality of H.R. 12471, in light of the President's veto that rested, in part, on a proposition of unconstitutionality. Before I do so, I would note that the certainty of the Veto Message of 17 October 1974 has been somewhat diluted by later statements. In the Veto Message, the President said: "Such a provision [referring to the provision for judicial review of the propriety of classification of documents] would violate constitutional principles." In this concluding paragraph, he reiterated "that the bill as enrolled is unconstitutional." But only last night, I heard him say to the newspaper fraternity that was urging an override of his veto, that the provisions "may be" unconstitutional.

Although President Ford states that the provision to which he takes exception is unconstitutional, not surprisingly, he refers neither to a provision of the Constitution nor to any judicial decision on which such a conclusion could rest. It is not surprising, because there is neither constitutional provision nor Supreme Court decision to support his position.

My considered opinion is that the issues between the Congress and the President in this regard are really issues of policy and not at all issues of constitutionality. To me, it is clear that the bill does not offend the Constitution in any way.

The provision in question was described in the Conference Report to accompany H.R. 12471 in this way:

NATIONAL DEFENSE AND FOREIGN POLICY EXEMPTION (B) (1)

The House bill amended subsection (b)(1) of the Freedom of Information law to permit the withholding of information "authorized under the criteria established by an Executive order to be kept secret in the interest of the national defense or foreign policy."

The Senate amendment contained similar language but added "statute" to the exemption provision.

The conference substitute combines language of both House and Senate bills to permit the withholding of information where it is "specially authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy" and is "in fact, properly classified" pursuant to both procedural and substantive criteria contained in such Executive order.

When linked with the authority conferred upon the Federal courts in this conference substitute for *in camera* examination of contested records as part of their *de novo* determination in Freedom of Information cases, this clarifies Congressional intent to override the Supreme Court's holding in the case of *E.P.A.* v. *Mink, et al.*, supra, with respect to *in camera* review of classified documents.

However, the conferees recognize that the Executive departments responsible for national defense and foreign policy matters have unique insights into what adverse affects might occur as a result of public disclosure of a particular classified record. Accordingly, the conferees expect that Federal courts, in making *de novo* determinations in section 552(b)(1) cases under the Freedom of Information law, will accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record.

Restricted Data (42 U.S.C. 2162), communication information (18 U.S.C. 798), and intelligence sources and methods (50 U.S.C. 403 (d)(3) and (g)), for example, may be classified and exempted under section 552 (b)(3) of the Freedom of Information Act. When such information is subjected to court review, the court should recognize that if such information is classified pursuant to one of the above statutes, it shall be exempted under this law.

Presidential objection is to the standard to be used by the courts in determining the propriety of a claimed exemption from the duty to produce the information required. The bill requires that the Court determine that the material sought is "in fact, properly classified." The President would propose a standard be whether "there is a reasonable basis to support the classification pursuant to the Executive order." Unless the President is really asserting that the classification by the executive department is to be treated as conclusive, I am at a loss to understand what his constitutional argument could be.

The difference between the President and the Congress does not go to the question whether there is a constitutional privilege to be afforded to classified documents. I have doubts that any such constitutional privilege exists. But that is irrelevant to the differences between the Presidential and Congressional positions. For the question is not whether such materials as come in question are privileged; the statute in question recognizes such a privilege. The issue is how to determine whether the materials in issue are entitled to the privilege. Such privilege, under either the Presidential or the Congressional view, would extend only to materials that are, indeed, in the category of "military" or "state" secrets. If the materials do not fall into the privileged category, they are not entitled to protection from disclosure.

Nor does the President contend that the courts cannot undertake the determination by *in camera* inspection of the questioned material, where necessary. Both the bill and the President's suggested alternative would leave that power with the courts. The President would provide: "The court may examine such records *in camera* only if it is necessary, after consideration by the court of all other attendant material, in order to determine whether such classification is proper." Congress has expressed similar recognition of the weight to be given to administrative action. As the quotation from the Conference Report set out above makes clear: ". . . the conferees recognize that the Executive departments responsible for national defense and foreign policy matters have unique insights into what adverse affects [sic] might occur as a result of public disclosure of a particular classified record. Accordingly, the conferees expect that Federal courts, in making *de novo* determinations in section 552(h)(1) cases under the Freedom of Information law, will accord substantial weight to an agency's affidavit concerning the details of the classified status of the disputed record."

Under both the President's alternative and the bill as written, the courts are authorized to undertake *in camera* inspection, if necessary to determine whether the materials are

Those who say consumerism has had a major effect on their companies are more certain than other executives that consumerism is basically a positive force for business. They are also more positive in their perception of business's responsiveness to consumerism thus far.

Top managers view consumerism as a substantive issue rather than simply as a political one and are more likely than operating managers to espouse substantive company responses to it. At the same time, top-level managers are more optimistic about the efficacy of business self-regulation.

Executives in those industries where consumerism has had the most direct impact—consumer durables and nondurables, advertising, and retailing— feel that the marketplace *already* has shifted to a seller beware atmosphere. These same executives also see greater progress in product improvement and in other consumer-oriented programs than do executives in other industries.

EXHIBIT VIII—*Companies doing an effective job responding to consumer pressures*

Percent of respondents mentioning company

Company:	
American Motors	21.5
Sears, Roebuck	13.0
Ford	12.9
General Motors	7.6
AT&T	6.4
General Electric	5.2
Whirlpool	4.1
IBM	2.4
Procter & Gamble	2.4
J. C. Penney	2.2
Zenith	1.9
Volkswagen	1.8
Xerox	1.7
Exxon	1.7
Maytag	1.7

OVERALL APPRAISAL

What then is business's overall appraisal of consumerism? In trying to develop an answer to this broad question, we must note that consumerism is but one of several societal pressures on business, others being anti-pollution actions, more minority group hiring and promotion, and so on. Executives, however, by a rather wide margin (over 2–1), think "business generally is more responsive to consumerism than to other societal pressures."

EXHIBIT IX

THE PACE OF PROGRESS ON CONSUMER ISSUES

Issue	Percent of those responding who consider— Better today than 10 years ago	Will be better 10 years from now than today	Could be better ideally than today
Quality of most products	59	60	76
Quality of manufacturers' repair and maintenance services	36	57	79
Truthfulness in advertising	47	57	73
Manufacturers' sensitivity to consumer complaints	72	64	72
The consumer's lot	59	61	72

A likely reason for this attitude—and perhaps a response to the broader matter of an overall appraisal—is businessmen's strong belief that "companies can capitalize on consumerism as a competitive marketing tool." Some 89% agree with this claim. Further, almost 7 out of 10 respondents consider consumerism an opportunity for marketers, while only 1 out of 10 see it as a threat. "Consumerism is a positive force in the marketplace" (71%), not a negative one (13%).

So businessmen see consumerism basically as an ally, a tool through which profits can be generated. Indeed, 86% agree that "company investment in consumer service and satisfaction will usually pay for itself." However, not all of consumerism's effects are translated into added service and satisfaction for the consumer. For example, executives agree (5-1) that "consumerists' demands lead to higher costs and prices."

On the whole, however, what executives are telling us is that consumerism is good for the consumer and good for business. Of our responding executives, 70% agree (17% disagree) that "consumerism's pressures overall have had a positive effect on business." On the corollary statement that "consumerism's pressures overall have had a positive result for the consumer," some 74% agree and only 14% disagree—an interesting twin-faceted overall endorsement of consumerism!

"I'm optimistic," the president of an industrial products company said, "because I think that good business practices and consumerism are indivisible—what's good for consumers has to be good for business in the long run, and awareness of this by business and consumer is beneficial."

To what degree does this optimism reflect executives' enthusiasm over business's ability to embrace consumerism and turn it to the mutual advantage of consumers and business? To what degree does it reflect reluctant acceptance that consumerism is here to stay and thus will inexorably work its way to both groups' advantage? We have no definite answer in these questions. But we do know from this study that consumerism is no longer considered anathema by management. It is seen as a positive force—one that has brought about a genuine change in business practices, one that can both benefit business and improve the consumer's lot.

SST FLIGHT INTO SAN FRANCISCO AND LOS ANGELES INTERNATIONAL AIRPORTS

Mr. TUNNEY. Mr. President, I have been concerned about supersonic transport flights into the United States for a long time. Now, the Concorde is coming to California.

I have written to FAA Administrator Butterfield expressing my reservations about these demonstration flights.

I ask unanimous consent that the text of this letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, D.C., Oct. 11, 1974.

Mr. ALEXANDER P. BUTTERFIELD,
Administrator, Federal Aviation Administration, Washington, D.C.

DEAR MR. BUTTERFIELD: As you know, the British Aircraft Corporation will be conducting promotional demonstration flights of its Concorde supersonic transport at Los Angeles and San Francisco International Airports during the next few weeks.

I flatly and consistently have opposed legislation to subsidize an American SST, but I am concerned that foreign airlines may insist on putting their own SSTs on intercontinental routes to the United States, and I believe strong and immediate action must be taken to prevent adverse noise and environmental effects of flights to our cities. The landings in Los Angeles and San Francisco should be utilized as a crucial test for gathering specific information on the impact of the Concorde. Two major requirements must be implemented to protect American cities from the hazards of supersonic jets:

First, it is imperative as mandated by the Noise Control Act of 1972 and as promised by your Agency since 1970, that noise regulations be promulgated for SST landings, take-offs and subsonic travel "in order to protect the public health and welfare." Specific clarification of the relationship of the Concorde to the SST rule is essential. The United States Senate has already voted overwhelmingly (62 to 17) to make the FAR Part 36 standards for subsonic aircraft applicable to the SST. Existing FAA rules, barring fly-overs of supersonic aircraft at supersonic speeds, are inadequate because they lack any requirements regarding landings, take-offs or flights by supersonic aircraft at subsonic speeds.

Second, an adequate environmental impact statement must be completed in accordance with Council on Environmental Quality Guidelines Section 1500.2(b) which states that "initial assessments of the environmental impacts of proposed action should be undertaken concurrently with initial technical and economic studies." As the CEQ has pointed out, "if the 102 process is not closely integrated at this early point, it risks becoming an overlay upon agency decision-making. And it tends to serve as a post facto justification of decisions based on traditional and narrow grounds." (CEQ, Third Annual Report at 206, cited in *Scientists' Institute for Public Information v. A.E.C.* 481 F.2d 1079, D.C. Cir., 1973).

Thus, in order to be meaningful, an adequate impact statement must be completed concurrently with any additional test flights of the Concorde or other SST aircraft. Among other issues, such a statement must address adequately the fears that SST flights adversely affect the ozone layer in our upper atmosphere and cause considerably more sideline noise. Prompt clearance by relevant agencies and personnel and immediate issuance of the statement are essential.

The SST seems an incredibly wasteful and imprudent plane. I fully support the recent Los Angeles City Council resolution offered by Councilwoman Pat Russell, to the effect that one test flight shall not be construed as a precedent in favor of an endorsement of the SST.

I request a status report, detailing your progress toward compliance with these tasks, by November 1, 1974.

Sincerely,

JOHN V. TUNNEY,
U.S. Senator.

GENOCIDE TREATY HAS RECEIVED OVERWHELMING SUPPORT

Mr. PROXMIRE. Mr. President, it seems almost ironic, that the Genocide Convention, a document the United States lobbied so hard for and had a major role in the writing of, has yet to be ratified by the Senate body. It is equally ironic that some of the most respected organizations and public officials have for 25 years urged ratification, and yet the Senate of the United States, the very body selected to represent the people of the United States, has thus far refused to give its consent to the people's wishes and to the logical morality of the human rights safeguarded by the Genocide Treaty.

Every U.S. administration since 1949 has expressed support for ratification of this treaty. On June 16, 1949, President Truman transmitted the following message to the Senate in urging speedy action.

By the leading part the United States has taken in the United Nations in producing an effective international legal instrument outlawing the world-shocking crime of genocide, we have established before the world

properly classified. And it should be clearly noted that the issue as posed by the bill is whether the classification is proper pursuant to standards established by the executive branch itself for such classification.

It seems clear to me that the provisions of the bill are fully in accord with the only Supreme Court decision that directed itself to the issue that purports to be made between the President and the Congress. I refer to the Supreme Court decision in *United States* v. *Reynolds*, 345 U.S. 1 (1953). There the question was whether a federal court could order the production of materials classified by the executive branch as military secrets. The Court set forth the proper procedure for making that determination in these words:

Judicial experience with the privilege which protects military and state secrets has been limited in this country. English experience has been more extensive, but still relatively slight compared with other evidentiary privileges. Nevertheless, the principles which control the application of the privilege emerge quite clearly from the available precedents. The privilege belongs to the Government and must be asserted by it; it can neither be claimed nor waived by a private party. It is not to be lightly invoked. There must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer. The court itself must determine whether the circumstances are appropriate for the claim of privilege, and yet do so without forcing a disclosure of the very thing the privilege is designed to protect. The latter requirement is the only one which presents real difficulty. As to it, we find it helpful to draw upon judicial experience in dealing with an analogous privilege, the privilege against self-incrimination.

The privilege against self-incrimination presented the courts with a similar sort of problem. Too much judicial inquiry into the claim of privilege was meant to protect, while a complete abandonment of judicial control would lead to intolerable abuses. Indeed, in the earlier stages of judicial experience with the problem, both extremes were advocated, some saying that the bare assertion by the witness must be taken as conclusive, and others saying that the witness should be required to reveal the matter behind his claim of privilege to the judge for verification. Neither extreme prevailed, and a sound formula of compromise was developed. This formula received authoritative expression in this country as early as the *Burr* trial. There are differences in phraseology, but in substance it is agreed that the court must be satisfied from all the evidence and circumstances, and "from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." *Hoffman* v. *United States*, 341 U.S. 479, 486–487. If the court is so satisfied, the claim of the privilege will be accepted without requiring further disclosure.

Regardless of how it is articulated, some like formula of compromise must be applied here. Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers. Yet we will not go so far as to say that the court may automatically require a complete disclosure to the judge before the claim of privilege will be accepted in any case.

It may be possible to satisfy the court, from all the circumstances of the case, that there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged. When this is the case, the occasion for the privilege is appropriate, and the court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone, in chambers.

There is nothing in *E.P.A.* v. *Mink*, 410 U.S. 73 (1973), inconsistent with the provisions of amendatory law that the President has vetoed. The vetoed bill is in fact a response to the deficiencies of the Freedom of Information Act as applied in the *Mink* case. The sole question resolved there was the meaning of the statute as it was then framed, and as Mr. Justice Stewart said in his concurring opinion:

"This case presents no constitutional claims, and no issues regarding the nature or scope of "Executive privilege." It involves no effort to invoke judicial power to require any documents to be reclassified under the mandate of the new Executive Order 11652. The case before us involves only the meaning of two exemptive provisions of the so-called Freedom of Information Act, 5 U.S.C. § 552.

"My Brother DOUGLAS says that the Court makes a 'shambles' of the announced purpose of that Act. But it is Congress, not the Court, that in § 552(b)(1) has ordained unquestioning deference to the Executive's use of the 'secret' stamp. As the opinion of the Court demonstrates, the language of the exemption, confirmed by its legislative history, plainly witholds from disclosure matters 'specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy." In short, once a federal court has determined that the Executive has imposed that requirement, it may go no further under the Act.

"One would suppose that a nuclear test that engendered fierce controversy within the Executive Branch of our Government would be precisely the kind of event that should be opened to the fullest possible disclosure consistent with legitimate interests of national defense. Without such disclosure, factual information available to the concerned Executive agencies cannot be considered by the people or evaluated by the Congress. And with the people and their representatives reduced to a state of ignorance, the democratic process is paralyzed.

"But the Court's opinion demonstrates that Congress has conspicuously failed to attack the problem that my Brother Douglas discusses. Instead, it has built into the Freedom of Information Act an exemption that provides no means to question an Executive decision to stamp a document "secret," however synical, myopic, or even corrupt that decision might have been."

Indeed, the Court, in its opinion, makes it clear that the question was within Congressional control and all but invited the legislation that is in issue between the President and the Congress here: "Congress could certainly have provided that the Executive Branch adopt new procedures or it could have established its own procedures—subject only to whatever limitations the Executive privilege may be held to impose upon such congressional ordering. Cf. *United States* v. *Reynolds*, 345 U.S. 1 (1953). But Exemption 1 does neither. It states with the utmost directness that the Act exempts matters 'specifically required by Executive order to be kept secret.' Congress was well aware of the Order and obviously accepted determinations pursuant to that Order as qualifying for exempt status under § (b)(1)." 410 U.S. at 83. It is obvious from the bill that Congress is no longer willing to accept an executive classification as final and determinative.

I would repeat that the issue between Congress and the President here is not whether there is or should be a privilege for military and state secrets. Both are in agreement that there should be such a privilege. Nor is the issue between the President and the Congress the question whether the federal courts should have the power of *in camera* inspection in order to determine whether the materials that are classified should retain their privilege. Both are in agreement that *in camera* inspection is appropriate. The controversy is solely over the question of the standard to be applied by the courts in making determinations of availability. Congress says that the materials in question must in fact have been properly classified in accordance with the Executive's own standards for classification. The President wants the secrecy maintained if the court finds a "reasonable," if erroneous, basis for the classification. The distinction cannot, in fact, be important except in a very small number of cases, indeed. In any event, I do not see how it is possible to say that the Presidential position is constitutional but the Congressional position unconstitutional.

Having said this, I would remind you that, if what is sought is not a statement about the meaning of the Constitution as applied to this question but a prediction of what the Supreme Court will do if faced with the question, I must say that the Court is a most unpredictable body in areas such as this. In the *Nixon* case, the Court assumed, without reason or proof, the existence of a constitutional basis for the so-called executive privilege, although it compelled the production of the materials there sought for *in camera* examination and judgment by the trial court. The only way to secure the Supreme Court's opinion on this matter is to enact the law and await that singular case in which the Presidential standard would bring about a different result from the Congressional standard. I can guess but I cannot warrant that the Court would there sustain the validity of the law.

With all good wishes.

Respectfully yours,

PHILIP B. KURLAND.

REPORT BY THE COMMISSION ON UNITED STATES-LATIN AMERICAN RELATIONS

Mr. CHILES. Mr. President, since the spring a distinguished group of Americans with substantial interest in Latin America has been meeting regularly to consider improvements that might be made in U.S. policy toward Latin America and relations within the hemisphere. During October this Commission on United States-Latin American relations, chaired by Sol Linowitz, fomer Ambassador to the OAS, issued a 54-page report with some 33 recommendations.

In the brief time I have had to peruse the Commission's report, I am impressed by the breadth of its content and its recommendations. Of course, none of us in this body will agree with all the recommendations in any commission report. I do not agree, for example, with the Commission recommendations on U.S. policy toward Cuba. Nevertheless, I think that all of us would benefit from giving this report and the recommendations some considerable thought. The report can be a good stimulus for debate and discussion within the Congress. It is with this in mind that I shall ask unanimous consent to have printed at the end of these remarks the conclusion of the Commission report.

The Commission's opening shot is simple and clear: "The United States should change its basic approach to Latin America and the Caribbean." The Commission reminds us that tremendous changes are occurring in world and hemispheric relations and that "unchanging policies

in the face of rapidly changing conditions is a sure recipe for trouble."

Our policy and relations with Latin America over the last decade have suffered most from neglect by policymakers and inadequate discussion and even knowledge within the Government of options actually being pursued. If our relations with Latin America are to improve, we must as a government give greater attention, both in the administration and in the Congress, to U.S. policies. The Commission has presented their report to President Ford. Hopefully, the Secretary of State will have some time to become aware of the report. I hope responsible Members of both Houses of Congress will give the recommendations and content of this report serious consideration as a means of focusing more attention on what positive role we can play in bringing our policy relations with Latin America up to date.

I ask unanimous consent that the conclusions of the Commission report be printed in the RECORD.

There being no objection, the conclusions of the report were ordered to be printed in the RECORD, as follows:

RECOMMENDATIONS BY THE COMMISSION ON UNITED STATES-LATIN AMERICAN RELATIONS

1. The United States should refrain from unilateral military interventions in Latin America, and covert U.S. interventions in the internal affairs of Latin American countries should be ended. The President and the Congress should ensure that all agencies of the U.S. government fully respect the sovereignty of the countries of Latin America.

2. The United States should urge all states in the region to provide free access and essential guarantees to the Inter-American Commission on Human Rights. It should support efforts to strengthen the staff and enhance the prestige of the Commission, and should help assure that the Commission's reports are fully publicized and discussed in the OAS General Assembly.

3. The United States should press for the investigation of reported violations of human rights by appropriate international commissions, and it should take the findings of those groups into account in deciding on the substance and tone of its bilateral and multilateral relations.

4. As a demonstration of its determination to do what it can to alleviate the distress caused by political repression, the United States should expand its emergency immigration program for political refugees, whether those refugees flee oppression of the left or right.

5. The United States should take the initiative in seeking a more normal relationship with Cuba. While emphasizing that progress toward improved relations requires positive action on both sides, the Commission urges that the United States act now to end the trade embargo.

This recommended U.S. initiative toward Cuba should be implemented in conjunction with the Latin American countries. At the earliest opportunity—presumably the forthcoming Meeting of Foreign Ministers of the Organization of American States—the United States should consult with other OAS members, indicating its willingness to support repeal of the measures against Cuba adopted at the Ninth Meeting of Consultation of Ministers of Foreign Affairs in July 1964. Assuming that the OAS resolutions are repealed, the U.S. government should then revoke Executive regulations restricting trade between the United States and Cuba and ought to act, within the President's discretionary authority, to suspend any legislative provisions which penalize third countries for trading with Cuba.

Regardless of progress or a Cuban response in other areas, the United States, taking into consideration its discussions with other OAS members, should move quickly to: (a) drop its restriction on travel to and from Cuba; (b) make evident its willingness to permit cultural, scientific, and educational exchanges on a non-official basis; and (c) make clear its willingness to improve cooperative arrangements with Cuba on practical matters of mutual concern, such as hijacking and weather watching, and to negotiate on such additional matters as may be indicated. Appropriate opportunities should be taken for dealing with Cuba informally within international organizations. The United States government should encourage and facilitate, not discourage, non-official cultural exchanges and other forms of contact.

If and when Cuba's response permits, the Commission believes the President should be prepared to take other Executive actions and to seek whatever legislative changes may be necessary to facilitate commercial and cultural relations with Cuba. We should also be prepared to consider renewal of bilateral diplomatic relations as well as other steps to facilitate Cuba's integration into a constructive paattern of inter-American relationships.

When both Cuba and the United States have taken conciliatory steps toward constructive relations, it should be possible to resolve outstanding issues, and as securing compensation for expropriated U.S. properties, agreeing on the status of the U.S. base at Guantanamo, and fostering reconciliation among separated elements of the Cuban community.

6. We strongly support the signing and ratification of a new Panama Canal treaty based on the Statement of Principles accepted by both countries on February 6, 1974. Any arrangement should in fairness take into account the interests of U.S. citizens in the Canal Zone.

7. Consistent with the Statement of Principles and in the interests of efficiency and economy, the President should now take appropriate measures to reduce U.S. government personnel and operations which are not clearly essential to the Canal's operation and defense. In this connection the United States Armed Forces Southern Command should be transferred from the Canal Zone to the continental United States.

8. The United States should encourage and, where appropriate, participate in efforts to develop subregional, regional and global conventional arms limitation agreements among supplier and consumer nations.

9. The United States should terminate grant military material assistance programs in Latin America. The recently abolished Agency for International Development (AID) public safety program in Latin America, which provided equipment and training to police forces, should not be revised.

10. The United States should not actively encourage the purchase of arms by Latin American countries. However, legislative restrictions on arms transfers that discriminate against Latin America ought to be repealed. Conventional military equipment should be available to Latin American countries on a competitive, commercial and non-discriminatory basis—the same as what governing sales to other friendly nations, except those engaging in military hostilities or whose security forces are found by appropriate international processes to be systematically violating human rights.

11. U.S. Military Assistance Advisory Groups in Latin America should be phased out and replaced by small interservice liaison offices or joint commission delegations (possibly as part of Military Attache Offices), whose primary responsibilities would involve coordination of professional exchanges and training, rather than sales promotion or advisory functions.

12. The United States should abandon the threat or application of unilateral measures of economic coercion in its relations with the countries of Latin America. Specifically, the Commission urges:

(a) Repeal of the Hickenlooper and Gonzales Amendments and revocation of the January 1972 Presidential policy statement on expropriation.

(b) Repeal of the amendments to the Foreign Assistance Act, Foreign Military Sales Act, and Ship Loan Act which provide for automatic economic sanctions in cases of fisheries disputes.

(c) Rejection by the United States of economic pressures or policies of economic denial to affect the internal processes of Latin American countries. Such measures should be considered only pursuant to appropriate resolutions of the United Nations or the Organization of American States.

13. The United States should propose a modification of the Inter-American Development Bank charter to encourage additional contributions by other nations in a manner which would permit dilution of the U.S. voting share below one-third, or alternatively, to eliminate the requirement for a two-thirds majority in the Fund for Special Operations. But such action must be accomplished in a manner which would not lower the level of U.S. contributions to the Bank.

14. The United States should assure that its actions in the Inter American Development Bank and other multilateral development institutions accord with the broad purposes of those institutions and are not taken primarily to serve narrow U.S. political or economic interests.

15. The United States should encourage the strengthening of the OAS conciliation and peacekeeping capacities.

16. With respect to the future role of the OAS—including its structure, leadership and location—, the United States should be guided primarily by Latin American initiatives and wishes.

17. U.S. immigration legislation should be reviewed systematically with the aim of eliminating restrictions barring travel and migration on purely political grounds. The Commission urges that the President promptly seek Congressional approval for amendments designed to eliminate these restrictions. In the meantime, we urge the President to instruct all relevant U.S. agencies to interpret and apply existing legislation in the light of changed circumstances and priorities.

18. The United States should propose establishment of an Inter-American Endowment for Cultural Exchange, with funding from a percentage of the earnings of the Inter-American Development Bank. The mandate of such an entity should be broadly defined and its functioning should remain free from the pressures of government agencies in any of the participating countries. Its sole purpose should be to utilize the talents and capacities of institutions and individuals toward a better and broader understanding among the nations of the Americas.

19. The U.S. government should provide increased support for Latin American Area Studies at all levels of the educational system.

20. The United States should enact a generalized scheme of tariff preferences for developing countries. However, both the list of products to be admitted and the limitations on dollar volume should be drawn with a view to providing increased benefits to Latin America.

21. The United States should cooperate with Latin American nations in the forthcoming multilateral tariff negotiation to achieve tariff reductions on products which would be of mutual benefit.

22. The waiver provision on countervail-

rary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $150 per day for persons performing such services.

(c) The Chairman is authorized to negotiate and enter into contracts and agreements as the Commission determines are necessary in order to carry out its duties.

ASSISTANCE OF GOVERNMENT AGENCIES

SEC. 6. Each department, agency, and instrumentality of the Federal Government, including the Congress and independent agencies, and State and local agencies, consistent with the laws and the Constitution of the United States, shall furnish to the Commission, upon request of the Chairman, such data, reports, and such other information as the Commission deems necessary to carry out its functions under this Act.

DEFINITIONS

SEC. 7. As used in this act "Federal regulatory agency" includes any existing independent Federal agency which, as one of its principal responsibilities, exercises regulatory functions affecting one or more segments of American industry, as well as any agency or governmental unit within an agency or department of the Federal government which exercises such regulatory functions as one of its principal activities. The term is meant to include but not be limited to such independent regulatory agencies as the Interstate Commerce Commission, the Securities and Exchange Commission, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the Federal Energy Administration, the Federal Power Commission, the Federal Trade Commission, the Federal Communications Commission, the Federal Maritime Commission, the Civil Aeronautics Board, the Consumer Product Safety Commission, the Commodity Futures Trading Commission, the National Labor Relations Board, the Farm Credit Administration, the Tariff Commission, the Equal Employment Opportunity Commission, the Small Business Administration, the Nuclear Regulatory Commission, the Environmental Protection Agency, and others. The term is also meant to include but not be limited to such agencies or units within an agency or department as the Food and Drug Administration, the National Highway Traffic Safety Administration, the Occupational Safety and Health Administration, the Federal Aviation Administration, the Antitrust Division of the Justice Department, the Office of the Comptroller of the Currency, the Agricultural Marketing Service, the Commodity Credit Corporation, the Packers and Stockyard Administration, and others.

TERMINATION

SEC. 8. Sixty days after the submission of the final report provided for in section 3(b), the Commission shall cease to exist.

AUTHORIZATION

SEC. 9. There is authorized to be appropriated $1,500,000 to carry out the provisions of this Act.

By Mr. HATHAWAY:

S. 4169. A bill to prohibit unreasonable searches and seizures incident to and following arrests for traffic and vehicular law violations and to prohibit the use in Federal and State criminal trials of any evidence discovered in the course of or as a result of any such searches; and

S. 4170. A bill to prohibit unreasonable searches and seizures incident to and following arrests and to prohibit the use in Federal and State criminal trials of any evidence discovered in the course of or as a result of any such searches. Referred to the Committee on the Judiciary.

Mr. HATHAWAY. Mr. President, the purpose of the two bills which I am offering today is to assure persons of some degree of privacy by prohibiting all searches which are not strictly tied to and justified by the circumstances of their arrest.

The Traffic and Vehicular Arrests Evidence Act is limited to the situation in which stopping an individual for a traffic violation becomes a pretext for a full-scale search of the vehicle he is operating.

The Search and Seizures Act of 1974 is a more general bill. Both would utilize the traditional exclusionary rule.

In the preparation of this legislation, I solicited the help of the Civil Rights-Civil Liberties Research Committee of the Harvard Law School. In explaining my reasons for offering this legislation and what I feel is the need and justification for it, I ask unanimous consent to include in the RECORD the following excerpts from a memorandum prepared for me in connection with this legislation by Bill Wilkins, Lynne Bernabei, and Abigail Elias of the Civil Rights-Civil Liberties Research Committee.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXCERPTS FROM MEMORANDUM

The Fourth Amendment of the Constitution of the United States requires that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

As the law has developed, searches have generally been seen as reasonable within the meaning of this amendment only when accompanied by a search warrant. Searches without warrants, however, have come to be seen as reasonable and lawful under certain special circumstances. Such special circumstances fall into two categories: searches incident to a valid arrest, and searches under "exigent circumstances." The traditional reasons behind allowing searches incident to arrest, were twofold: first, to allow the officer to remove any dangerous weapons which might endanger the officer himself, and second, to prevent the concealment or destruction of any evidence. *Chimel* v. *California*, 395 US 752 (1969).

The "exigent circumstances" exception allows an officer, where he has enough probable cause to search as would justify a warrant, but has no cause to arrest, to proceed with a warrantless seach if exigent circumstnces make the usual warrant procedure impractical. Such warrantless searches are seen as reasonable because insisting on warrants in these cases would allow the evidence in question to disappear. *Carroll* v. *United States*, 267 US 132 (1925).

The exception which concerns us here is the exception allowing warrantless searches incident to an arrest. Until recently, our courts have refused to give an absolute police power to search incident to any arrest. They have insisted that, for a search to be reasonable, "the scope of the search must be strictly tied to and justified by the circumstances which rendered its initiation permissible" and that the police officer carefully restrict his search "to what was appropriate to the discovery of the particular items which he sought." *Terry* v. *Ohio*, 392 US 1 (1968).

In 1973, however, the Supreme Court of the United States held, in two cases involving warrantless searches incident to traffic arrests, that all searches incident to arrest are reasonable, and need not be restricted by the circumstances of the arrest to be lawful. *United States* v. *Robinson*, 414 US 218, 94 S Ct 467 (1973); *Gustafson* v. *Florida*, 414 US 260, 94 S Ct 488 (1973). These decisions found to be admissible as evidence drugs seized from persons whom the police had arrested for driving without a valid license. In laying down a uniform arrest-search rule, the Supreme Court rejected the earlier reasoning for restricting a traffic arrest search:

"The authority to search the person incident to a lawful custodial arrest, while based on the need to disarm and to discover evidence, does not depend on what a court may later decide was the proability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification." *United States* v. *Robinson*, supra at 472.

We feel this is a dangerous rule, and one which threatens the traditional rights of privacy.

It is offensive to most of our notions of privacy that such trivial offenses could constitute the sole basis for such a serious intrusion as a full search.

By Mr. HUGH SCOTT (for himself, Mr. TAFT, Mr. BENNETT, Mr. HRUSKA, Mr. BROCK, and Mr. GRIFFIN):

S. 4172. A bill to amend section 552 of title 5, United States Code, known as the Freedom of Information Act. Referred to the Committee on Government Operations.

FREEDOM OF INFORMATION ACT AMENDMENTS: A CLEAN BILL

Mr. HUGH SCOTT. Mr. President, on October 17, President Ford vetoed H.R. 12471, a bill to amend the Freedom of Information Act—title 5, United States Code, section 552.

In returning H.R. 12471, the President noted that it was only his conviction that the bill as enrolled is unconstitutional and unworkable in several vital respects that caused him to withhold approval.

The bill that I introduce today will cure the defects revealed by the President in his veto message. It's central features may be summarized in the following manner.

REVIEW OF CLASSIFIED DOCUMENTS

This bill would, as did the bill it is designed to replace, permit a court to review documents classified by agencies in the interest of national defense or foreign policy and to insure the reasonableness of that classification. However, the proposed language would permit a court to review the document itself and to disclose the document only if there is no reasonable basis to support the classification. This bill removes a constitutionally questionable arrangement in H.R. 12471 as vetoed whereby a highly sensitive document pertaining to our national defense would have to be disclosed even if the classification were reasonable. The new language simply provides that after a review of all the evidence pertaining to a classified document, including the document itself if necessary, the document may be disclosed unless there is a "rea-

sonable basis" for the classification by the agency. The burden of proof remains upon the agency to sustain the reasonableness of the classification.

TIME LIMITS AND COSTS

As vetoed, H.R. 12471 provides that following a request for documents an agency must determine whether to furnish the documents within 10 days, and following an appeal from a determination to withhold documents, the agency is afforded 20 days to decide the appeal. In unusual circumstances an agency may obtain an additional 10 days for either determination.

Time limits on agency action with regard to requested documents are important additions to the public's right to know of the operations of its Government, and several agencies have already voluntarily adopted time limits for their responses. Experience with these time limits indicates that the restrictions in H.R. 12471 may be impracticable. Because of the large number of documents often requested, their decentralized location and the importance of other agency business it might often be impossible to comply with requests in the time allotted.

This bill would provide 30 days for the initial determination and would provide an additional 15 days in unusual circumstances. Furthermore, in exceptional circumstances, the agency would be authorized to seek additional time from a court if it could demonstrate due diligence in responding to a request. For particularly burdensome requests, an agency would also be permitted to charge for the cost of reviewing requested documents if such cost exceeded $100 for each request or each series of related requests. This provision would help to defray those unusual expenses in responding to requests for documents at a time when we are seeking to limit our governmental expenditures. Furthermore, the additional time afforded agencies in responding to requests will lead to more responsive determinations and more efficient use of agency personnel and resources, while still providing for prompt agency response to requested documents.

INVESTIGATORY RECORDS

The first portion of this revision is intended to render more realistic the showing of harmful effect which the Government would have to make in order to sustain the withholding of investigatory records. It may not be possible in most cases to establish that release "would" cause particular harm of the type described. But when what is involved is harm so enormous as depriving a defendant of the right to a fair trial, invading personal privacy, compromising our law enforcement operations, and endangering the life or physical safety of law enforcement personnel, existence of a "substantial possibility" that the harmful effect will ensue ought to be adequate reason for withholding the document.

The second portion broadens the protection of confidential information provided to a criminal law enforcement agency to such information provided to an agency with civil law enforcement functions. There are several agencies that perform important civil law enforcement functions, and often civil law enforcement investigations directly lead to criminal investigations. In these instances it is essential that confidential information furnished only by a confidential source be protected from premature disclosure.

In the past, all records contained in investigatory files compiled for law enforcement purposes have been exempt from disclosure under the Freedom of Information Act. Although such a categorical exemption is too broad, Congress originally adopted that provision in 1966 because of special characteristics of these files which the present bill disregards. First, improper release of the information they contain can be harmful, and thus particularly careful screening is required; second, many of these files are of enormous size; and finally, the proportion of nonreleasable information they contain is typically much higher than that contained in other Government files. The combination of these factors makes it impracticable in some situations to devote the efforts of our law enforcement personnel to a paragraph-by-paragraph screening of these files. This is so whether or not the time which these personnel take from law enforcement duties is paid for by the person making the request. While this consideration does not justify the categorical exception of all investigatory files, it cannot be entirely ignored.

This bill will enable the agency head himself to make a case-by-case finding of impracticability, on the basis of specific factors which can be reviewed by the courts. This resolution is both reasonable and not subject to uncontrolled application by the executive branch. The last clause of the sentence also prevents this limited "investigatory files" exemption from being abused so as to protect records which are not investigatory records or which the agency knows do not qualify for any specific exemption from disclosure.

Mr. President, I would hope that my colleagues on both sides of the aisle recognize the salutary effect of these changes which have been recommended by the President.

Mr. HRUSKA. Mr. President, I support the bill introduced by Senator SCOTT which would amend the Freedom of Information Act to insure the fullest responsible disclosure of Government records.

As my colleagues are aware, this body passed a Freedom of Information bill, H.R. 12471, late last spring. I supported that bill, as it was reported out of the Senate Judiciary Committee. Indeed, I worked with the original author of that bill, the senior Senator from Massachusetts (Mr. KENNEDY) in drafting a bill that would remove the obstacles to full and faithful compliance with the mandate of the Freedom of Information Act. That mandate, of course, is to grant citizens the fullest access to records of Federal agencies that the right of privacy and effective government will permit.

The bill was amended on the floor, however, in a way that could open confidential files to the public at the expense of our Nation's interest in foreign relations and defense and every individual's interest in law enforcement and the right of privacy. Because of these amendments, the President was compelled to veto this bill. The bill introduced by the senior Senator from Pennsylvania (Mr. SCOTT) amends the enrolled bill to eliminate the military and diplomatic information problems and the damage to effective law enforcement in the enrolled bill. By amending the bill in this way, we will have worked out a fair, responsible way to increase public access to Federal papers and records without impairing individual rights and essential Government activities.

In vetoing the enrolled bill, the President expressed several reservations about the constitutionality and feasibility of H.R. 12471.

The first ground for vetoing this bill involves our Nation's military, intelligence and diplomatic secrets. At the outset, I want to stress what is and what is not the issue here.

The crux of the issue is not whether a judge should be authorized to review classified documents in camera. The President in his veto message stated that he was prepared to accept those aspects of the provision which would enable courts to inspect classified documents and review the justification for their classification. As this bill was reported out of the Judiciary Committee, it authorized judicial review of the justification for withholding classified documents in a provision I fully supported.

The issue, instead, is whether a standard should be established to guide the judge's decision as to whether a document is properly classified. As the President stated in his message:

> As the legislation now stands, a determination by the Secretary of Defense that disclosure of a document would endanger our national security would, even though reasonable, have to be overturned by a district judge who thought the plaintiff's position just as reasonable. Such a provision would violate constitutional principles and give less weight before the courts to an Executive determination involving the protection of our most vital national defense interests than is accorded determinations involving routine regulatory matters.

The constitutionality of the enrolled bills provision granting the courts unlimited power in reviewing and releasing classified documents is discussed in a memorandum that I ask by unanimous consent be printed at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HRUSKA. Basically, the points of this memorandum can be summarized as follows:

First. The Constitution vests in the President the authority to maintain our national defense and to conduct our foreign relations.

Second. In order to discharge these responsibilities effectively, the President must take measures to insure that confidential information bearing on national defense and foreign relations is not disclosed to all the world.

Third. To grant a judge the authority to determine, on his own, whether this same type of information should be disclosed to the public infringes on the constitutional power of the President to maintain in confidence national defense and foreign relations information.

Mr. President, it is one thing to review an agency's decision to determine whether the agency acted arbitrarily or unreasonably. It is an entirely different matter to empower a court to determine in the first instance whether a document should be classified or released to the public.

The issue then boils down to this: Should judicial scrutiny of classified documents be unchecked?

The legal memorandum I refer to cites a number of recent cases as well as law review articles in analyzing this issue. A thoughtful reading of this memorandum will make the President's veto even more convincing.

Second, the confidentiality of countless law enforcement files containing information of the highest order of privacy is jeopardized by this bill. At stake here is not simply the issue of effective law enforcement but the individual's right to privacy and to be secure in the knowledge that information he furnishes to a law enforcement agency will not be disclosed to anyone who requests it.

By requiring the FBI and other law enforcement agencies to respond to any person's request for investigative information by sifting through pages and pages of files within strict time limits to prove to a court line-by-line that disclosure would cause a type of harm specified in the amendment distorts the purpose of agencies such as the FBI. The magnitude of such a task and the standards of harm that are defined in the amendment create serious doubt as to whether such a provision is workable aside from its questionable wisdom. Where the rights of privacy and personal security are at stake, no measures should be adopted that even tend indirectly to undermine these fundamental rights.

In his veto message, the President also expressed concern with the time limits set out in the bill. These time limits can be counterproductive to the disclosure of information under the act. If an agency is required to respond to a request within unrealistic time limits, it will be forced to deny the request for fear that the interests in confidentiality such as the right of privacy, the confidentiality of informants and frank discussion of policy issues, would be jeopardized. Thus, the agency will be compelled to deny requests that, in many cases, could with more study be granted. Unrealistic time limits, therefore, thwart full and free disclosure.

Mr. President, I fully support most of the features of enrolled bill, H.R. 12471. It was—and is—my belief that amendments to the Freedom of Information Act are necessary to remove obstacles to full and free compliance with the thrust of the act.

As I stated earlier, I support judicial review of the justification for withholding classified documents. I also support realistic time limits for processing requests so that a requester will not be frustrated by seemingly endless delays by a reluctant agency. And I support reforms to insure that information that can be disclosed is not hidden in law enforcement files.

It is because I believe that amendments to the Freedom of Information Act are necessary that I am cosponsoring the bill introduced today. This bill retains the favorable features of H.R. 12471 and incorporates the amendments proposed by the President to insure that we have a bill that is both constitutional and workable.

The basic features of the amendments incorporated in this bill are the following:

First, a standard is established to guide the judge's decision in reviewing classified documents. Judicial scrutiny of classified documents is not left unchecked. The amendment simply provides that a classified document should not be released to the public unless the judge finds that there is no reasonable basis to support the classification.

Second, the time limits provision is amended to reflect a more realistic approach to administration of the act. The amendment would grant an agency 30 days rather than merely 10 days to respond to a request. Because of the location of documents, the press of other agency business and the large number of documents often requested, it is at times impossible to determine in 10 days whether the records requested should be disclosed.

Third, the amendment broadens the bill's protection of confidential information provided to a criminal law enforcement agency. It insures that information that can be disclosed without impairing an agency's discharge of its responsibilities or infringing an individual's rights, is, in fact, subject to disclosure.

Mr. President, these amendments are constructive to the thrust of the freedom of information. A bill which embodies the basic features of H.R. 12471 together with the amendments proposed by the President will give us legislation insuring the fullest responsible disclosure of Government records. It is my hope that this legislation will be reenacted with these amendments.

MEMORANDUM

(Re: Freedom of Information amendments: Constitutionality of provisions of H.R. 12471 pertaining to judicial release of classified defense and foreign relations documents.)

This memorandum discusses the constitutionality of the provisions of H.R. 12471, the bill amending the Freedom of Information Act, which authorizes a court to release documents that are reasonably classified. It concludes that while Congress can provide for judicial review to prevent the withholding of documents based upon unreasonable classification, the provisions of H.R. 12471 which empower the courts to release documents that have been reasonably classified to protect national defense and foreign relations would be an unconstitutional infringement upon the powers and duties of the executive under Article II of the Constitution.[1]

SUMMARY OF DISCUSSION

I. The Constitution and the words of the Founding Fathers make clear that the Executive's function of maintaining this nation's defense and conducting our foreign relations carries with it the responsibility to control the dissemination of information affecting the success of those responsibilities.

II. The Supreme Court, other courts, and previous Acts of Congress have consistently recognized the Executive's constitutional power and duty to protect defense and foreign relations information.

III. Responsible critics of the Supreme Court's decision in *EPA* v. *Mink*[2] have recognized that judicial review of classified documents must not undermine reasonable executive decisions that defense and foreign relations documents require protection.

DISCUSSION

I. Article II, § 1 of the Constitution vests the executive power of the United States in the President. Article II, § 2 makes him Commander-in-Chief of the armed forces. Article II, sections 2 and 3 entrust to him the conduct of foreign relations. Article II, § 3 commands him to "take care that the laws be faithfully executed." Article VI, clause 2 makes it clear that these laws include the Constitution itself, which, as noted, confers on the President the power to maintain our defense and conduct our foreign relations.

That the President would have authority to secure the secrecy and confidentiality necessary to the successful conduct of foreign affairs in a militarily unfriendly world was understood by the Framers of the Constitution. Writing in *Federalist*, No. 64, John Jay stated:

"It seldom happens in the negotiation of treaties, of whatever nature, but that perfect secrecy and immediate despatch are sometimes requisite. There are cases where the most useful intelligence may be obtained if the persons possessing it can be relieved from apprehensions of discovery. Those apprehensions will operate on those persons whether they are actuated by mercenary or friendly motives; and there doubtless are many of both descriptions who would rely on the secrecy of the President, but who would not confide in that of the Senate, and still less in that of a large popular Assembly. The convention have done well, therefore, in so disposing of the power of making treaties, that although the President must, in forming them, act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such a manner as prudence may suggest."

Jay then elaborated in some detail on the issue why the President needed authority to provide for secrecy in the conduct of international relations, noting that the rapidly changing tides of foreign affairs could be best handled by the executive branch which has the most experience and knowledge in this area.

II. In a line of cases running down to this year, the Supreme Court has consistently recognized the executive's constitutional power over information held in the exercise of its military and diplomatic functions.

In *New York Times* v. *United States*, 403 U.S. 713, 729–30 (1971), Justice Stewart, in a concurring opinion joined by Justice White, stated that the President's constitutional power in these areas implied a corresponding duty and authority to establish a system of

[1] There is no doubt that under the express language of H.R. 12471 as vetoed, providing for *in camera* inspection and *de novo* review of classified documents with the burden of proof on the government in the same terms that apply to all other government records, a judge is instructed to release documents that he finds have a reasonable basis for classification if he also finds that the plaintiff's case is equally or more reasonable.

[2] 410 U.S. 73 (1973).

classifying documents. Justice Stewart wrote:

"It is clear to me that it is the constitutional duty of the Executive—as a matter of sovereign prerogative and not as a matter of law as the courts know law—through the promulgation and enforcement of executive regulations, to protect the confidentiality necessary to carry out its responsibilities in the fields of international relations and defense."

Justice Marshall, in a concurring opinion, also recognized the President's authority to classify information. 403 U.S. at 741. The views expressed by Justices Stewart, White, and Marshall are supported by other Supreme Court cases, by congressional statutes noted below, and by the intent of the Framers of the Constitution as noted above. In the area of international relations and defense the powers of the Executive traditionally have been treated as very broad, although not limitless.

In *C & S Air Lines* v. *Waterman Corp.*, 333 U.S. 103, 109 (1948),[3] the Supreme Court stated that the "President . . . possesses in his own right certain powers conferred by the Constitution on him as Commander-in-Chief and as the Nation's organ in foreign affairs." Acting in these capacities, the Court added, the President "has available Intelligence services whose reports are not and ought not to be published to the world." *Id.* at 111.

In *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, 319 (1936), the Court stated that in the area of foreign affairs, "with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation." The Court quoted with approval John Marshall's statement made as a Congressman that "[t]he President is the sole organ of the nation in its external relations, and its sole representative with foreign nations." An 1816 Senate Foreign Relations Committee Report, quoted with approval by the Court in the *Curtiss-Wright* Case, also recognized the President's constitutional power with respect to foreign affairs and the national safety and observed:

"The nature of transactions with foreign nations, moreover, requires caution and unity of design, and their success frequently depends on secrecy and dispatch."

Just this past summer, in its 8–0 opinion on former President Nixon's effortsto withhold tapes sought by the Special Prosecutor, the Supreme Court expressly recognized that the authority of the President to maintain the confidentiality of secret documents is grounded in the Constitution. The Court stated that, although a generalized claim of confidentiality would not prevail over the specific need shown in the pending criminal proceedings, a President has a "constitutionally based" power to withhold information the disclosure of which could impair the effective discharge of a President's powers:

"In this case the President challenges a subpoena served on him as a third party requiring the production of materials for use in a criminal prosecution on the claim that he has a privilege against disclosure of confidential communications. *He does not place his claim of privilege on the ground they are military or diplomatic secrets.* As to these areas of Art. II duties the courts have traditionally shown the utmost deference to presidential responsibilities. In C. & S. Air Lines v. Waterman Steamship Corp., 333 U.S. 103, 111, 68 S.Ct. 431, 436, 92 L.Ed. 568 (1948), dealing with presidential authority involving foreign policy considerations, the Court said:

'The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports are not and ought not to be published to the world. It would be intolerable that courts, without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret.' *Id.*, at 111, 68 S.Ct., at 436.

"In United States v. Reynolds, 345 U.S. 1, 73 S.Ct. 528, 97 L.Ed. 727 (1952), dealing with a claimant's demand for evidence in a damage case against the Government the Court said:

'It may be possible to satisfy the court, from all the circumstances of the case, that there is a reasonable danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged. When this is the case, the occasion for the privilege is appropriate, and the court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone, in chambers.'

No case of the Court, however, has extended this high degree of deference to a President's generalized interest in confidentiality. Nowhere in the Constitution, as we have noted earlier, is there any explicit reference to a privilege of confidentiality, *yet to the extent this interest relates to the effective discharge of a President's powers, it is constitutionally based.*" (Emphasis supplied.) *United States* v. *Nixon*, ——— U.S. ———, 94 S. Ct. 3090 at 3108–3109 (July 24, 1974).

Another recent court decision, *United States* v. *Marchetti*, 466 F.2d 1309 (4 Cir. 1972) is particularly noteworthy, both for the court's succinct summary of the law in this area, and especially for the concurring opinion of Judge Craven, which expresses views similar to those in President Ford's veto message as to the proper scope of judicial review of the withholding of classified information.

The Court summarized the law as follows:

"Gathering intelligence information and the other activities of the Agency, including clandestine affairs against other nations, are all within the *President's constitutional responsibility for the security of the Nation* as the Chief Executive and as Commander in Chief of our Armed forces. Const., art. II, § 2. Citizens have the right to criticize the conduct of our foreign affairs, but the Government also has the right and the duty to strive for internal secrecy about the conduct of governmental affairs in areas in which disclosure *may reasonably be thought* to be inconsistent with the national interest . ." (Emphasis supplied.) 466 F.2d at 1315.

Judge Craven's concurring opinion strikes an essentially similar balance in this field as that which President Ford has urged (and as was reflected, incidentally, in the pending amendments as reported by the Senate Judiciary Committee). Judge Craven said:

"I agree that '[t]he conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative—"the political"—departments of the government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.' Oetjen v. Central Leather Co., 246 U.S. 297, 302, 38 S.Ct. 309, 311, 62 L.Ed. 726, 732 (1917).

"I concur in the opinion of the court except for the statement that the classification of documents and information by the executive is not subject to judicial review. Because the national security may be involved and because of the expertise of the executive, I would resolve any doubt about the reasonableness of a classification in favor of the government. If the burden were put upon one who assails the classification, and surely it ought to be, much of the difficulty envisioned in the court's opinion would presumably disappear. Indeed, I would not object to a presumption of reasonableness, and a requirement that the assailant demonstrate by clear and convincing evidence that a classification is arbitrary and capricious before it may be invalidated.

"But however difficult the adjudication of the reasonableness of a secrecy classification, I cannot subscribed to a flat rule that it may never be attempted. The 'right to know' is in a period of gestation. I think that the people will increasingly insist upon knowing what their government is doing and that, because this knowledge is vital to government by the people, the 'right to know' will grow. I am not yet ready to foreclose any *inquiry into whether or not secrecy classifications are reasonable.* To protect those that are does not require that we also protect the frivolous and the absurd.

"Other than my doubt about the insulation of a classification system for judicial review, I fully concur in the opinion of the court." 466 F.2d at 1318, 1319. (Emphasis supplied.)

A number of congressional enactments have also recognized the first constitutional basis for Presidential authority to classify both the defense and the foreign relations types of national security information. The espionage laws, 19 U.S.C. §§ 792–798, alternately refer to classified information or make it imperative to establish a classification system in order to enforce them fairly and effectively. Subsection (b) of the Internal Security Act of 1950, 50 U.S.C. § 783, makes it a crime "for any officer or employee of the United States" to communicate to a foreign agent "any information of a kind *which shall have been* classified by the President as affecting the security of the United States. . . ." (emphasis supplied). See also 50 U.S.C. §783(c).

III. The two dissenting Supreme Court opinions in the *Mink* case, plus recent commentaries criticizing that decision in two distinguished law reviews, support the view that H.R. 12471, as vetoed, goes beyond overturning *Mink* and purports to transfer the basic constitutional responsibility for classification decisions from the executive branch to the courts.

Justice Brennan's dissenting opinion makes it very clear that he wished to affirm the decision of the Court of Appeals *which he understood only to call for the release of non-secret components of classified documents, not to override executive determinations as to which parts must remain classified for reasons of defense or foreign relations.* In referring to the argument of the petitioners" (*i.e.*, the government) Justice Brennan said:

"Even the petitioners concede, no doubt in response to the 'specifically required' standard of § 552(b)(1) and the 'specifically stated' requirement of § 552(c), that documents classified pursuant to § 3(b) of Executive Order 10501 cannot qualify under Exemption 1. Indeed, petitioners apparently accept the conclusion of the Court of Appeals that as to § 3(b):

'This court sees no basis for withholding on security grounds a document that, although separately unclassified, is regarded secret merely because it has been incorporated into a secret file. To the extent that our position in this respect is inconsistent with the above-quoted paragraph of Section 3 of Executive Order 10501, we deem it required by the terms and purpose of the [Freedom of Information Act], enacted subsequently to the Executive Order.' 464 F. 2d, at 745.

"Nevertheless, petitioners maintain that information classified pursuant to § 3(c) of the Order is exempt from disclosure under Exemption 1. The Court of Appeals rejected

[3] There the Court held that a Presidential decision approving or disapproving a Civil Aeronautics Board order granting or denying an application to engage in foreign air transportation was not subject to judicial review.

that contention, and in my view, correctly. The Court of Appeals stated:

'The same reasoning applies to this provision as the one dealing with physically-connected documents. Secrecy by association is not favored. If the non-secret components are separable from the secret remainder and may be read separately without distortion of meaning, they too should be disclosed.' 464 F. 2d, at 746.

"Petitioners' argument, adopted by the Court, is that this construction of the Act imputes to Congress an intent to authorize judges independently to review the Executive's decision to classify documents in the interest of national defense or foreign policy. That argument simply misconceives the holding of the Court of Appeals. Information classified pursuant to § 3(c), it must be emphasized, may receive the stamp of secrecy not because such secrecy is necessary to promote 'the national defense or foreign policy,' but simply because it constitutes a part of such other information which genuinely merits secrecy. Thus, to rectify this situation, the Court of Appeals ordered only that the District Court *in camera* determine '[i]f the non-secret components are separable from the secret remainder and may be read separately without distortion of meaning. . . .' *The determination whether any components are in fact 'non-secret' is left exclusively to the agency head representing the Executive Branch. The District Court is not authorized to declassify or to release information which the Executive, in its sound discretion, determines must be classified to 'be kept secret in the interest of the national defense or foreign policy.' The District Court's authority stops with the inquiry whether there are components of the documents which would not have been independently classified as secret. If the District Court finds, on in camera inspection, that there are such components, and that they can be read separately without distortion of meaning, the District Court may order their release.* * * * (Emphasis supplied.) pp. 3–5 of Brennan's opinion.

The remainder of Justice Brennan's opinion makes it clear that he objected to the majority's interpretation of the Freedom of Information Act as exempting an entire document from judicial review, inspection, and disclosure *by the mere fact that the document is classified,* even though the government might not dispute that some portions of the document do not warrant classification.

Justice Douglas' dissenting opinion is to the same effect—it stops well short of suggesting the substitution of judicial for executive discretion *as to that material which the executive determines warrants classification for reasons other than its mere inclusion in a classified document.* He said:

"The Government . . . suggests that judges have no business declassifying 'secrets," that judges are not familiar with the stuff with which these "Top Secret' or 'Secret' documents deal.

"That is to misconceive and distort the judicial function under § 552(a)(3) of the Act. *The Court of Appeals never dreamed that the trial judge would reclassify documents.* His first task would be to determine whether nonsecret material was *a mere appendage* to a 'secret' or 'top secret' file. His second task would be to determine whether under normal discovery procedures contained in Rule 26 of the Rules of Civil Procedure, factual material in these 'secret' or 'top secret' material [sic] *is detached from* the 'secret' and would therefore be available to litigants confronting the agency in ordinary lawsuits.

"Unless the District Court can do those things, the much advertised Freedom of Information Act is on its way to becoming shambles. Unless federal courts can be trusted, the Executive will hold complete sway and by *ipse dixit* make even the time of day 'top secret.' Certainly, the decision today will upset the 'workable formula,' at the heart of the legislative scheme, 'which encompasses, balances, and protects all interests, yet places emphasis on the fullest possible disclosure.' S. Rep. No. 813, *supra,* at 3. The Executive Branch now has *carte Blanche* to insulate information from public scrutiny *whether or not that information bears any discernible relation* to the interests sought to be protected by subsection (b)(1) of the Act. * * *." (Emphasis supplied.) pp. 5 and 6 of Douglas opinion.

Recent issues of the Columbia Law Review and the Duke Law Journal, containing careful scholarly appraisals of Freedom of Information Act developments, have both criticized the Supreme Court's decision in the *Mink* case, but both clearly reject a remedy that would transfer to the courts the basic responsibility for protecting national security information, as is envisaged by H.R. 12471 as vetoed. The 1974 Duke Law Journal, in an article on "Development Under the Freedom of Information Act—1973, says:

"In this regard, Senator Muskie recently proposed an amendment to the FOIA which would broaden the scope of de novo judicial review. Pursuant to the proposed amendment a court would be empowered to question the Executive's claim of secrecy by examining the classified records *in camera* in order to determine whether 'disclosure would be harmful to the national defense or foreign policy of the United States.' This proposal, however, extends judicial authority too far into the political decision-making process, a field not appropriately within the province of the courts. *A more satisfactory legislative solution would be a judicial procedure which would not unduly restrict the Executive's prerogative to determine what should remain secret in the national interest but which would simultaneously provide a limited judicial check on arbitrary and capricious executive determinations.* An acceptable compromise of these competing interests might be a procedure whereby the agency asserting the privilege would separately classify each document and portions thereof and prepare a detailed itemization and index of this classification scheme for the court. *Thus, the court could adequately ascertain whether the claim of privilege was based upon a reasoned determination rather than an arbitrary classification without subjecting the material to in camera scrutiny. Such a procedure would prevent indiscriminate and arbitrary classification yet not unduly infringe upon the privilege of the Executive to protect national secrets."* (Emphasis supplied.) 74 Duke L.J. 258–259.

The Columbia Law Review's June 1974 issue, in a comprehensive study entitled "The Freedom of Information Act: A Seven Year Assessment" says:

"To advocate some form of judicial scrutiny is not to say that power should be unchecked. That a court should assume the burden of declassifying documents seems altogether improper. Judgments as to the independent classification of genuinely secret information should be left to the executive. Little can be said, however, for exempting from disclosure non-classified information solely because of its physical nexus with a classified document. To assign to the judiciary the function of winnowing the state secret from the spuriously classified document does violence neither to the language of the Act as an integrated statute, nor to the declaration of policy implicit in the first exemption. Even conceding that excising interspersed but non-secret from secret matter necessarily implies the exercise of some substantive judgment, this does not amount to a de facto power of declassification. *Only materials that would not have been independently classified as secret should be deleted and disclosed on the court's initiative. In close cases, the court, cognizant of the 'delicate character of the responsibility of the President in the conduct of foreign affairs,' should defer to the executive determination of secrecy."* (Emphasis supplied.) 74 Col. L. Rev. 935.

A "Developments in Law Note on National Security" by the Harvard Law Review reaches the same conclusion. In discussing the role of the courts in reviewing classification decisions, it states that—

"There are limits to the scope of review that the courts are competent to exercise."

And concludes that—

"A court would have difficulty determining when the public interest in disclosure was sufficient to require the Government to divulge information notwithstanding a substantial national security interest in secrecy." 85 Harvard Law Review 1130, 1225–26 (1972).

The foregoing also helps to make clear why, with President Ford's suggested change, the bill's treatment of classified documents would be constitutional. All federal action, by any branch, is subject to the due process clause of the Fifth Amendment. Congress in passing the Freedom of Information Act has conferred on all persons a broad "liberty" of access to federal records. A right of access can also be regarded as a form of limited property. The President's powers over the conduct of defense and foreign relations and information pertaining thereto, as discussed above, must be reconciled with the citizen's right not to be deprived of his statutory "liberty" of access under the Act by a denial that is arbitrary and capricious and thus without due process of law. Judicial review to make certain that there is a reasonable basis for classification, as suggested by President Ford, is constitutionally warranted as a safeguard against such a denial of due process.

In short, the distinction is between empowering a court to review an agency's decision to determine whether it is arbitrary or clearly unreasonable and empowering a court to decide on its own what the agency should be. Where judicial scrutiny is unlimited, as in this latter case and as provided in the enrolled bill, the court can substitute its decision for that of the agency. This purported transfer of power intrudes upon the responsibility of the executive branch and, accordingly, is an unconstitutional infringement of the powers and duties of the Chief Executive.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 796

At the request of Mr. PELL, the Senator from South Dakota (Mr. MCGOVERN) and the Senator from Maine (Mr. MUSKIE) were added as cosponsors of S. 796, a bill to improve museum services.

S. 3707

At the request of Mr. TUNNEY, the Senator from New Mexico (Mr. MONTOYA) was added as a cosponsor of S. 3707, a bill to provide a tax credit for increases in personal savings.

S. 4159

At the request of Mr. TALMADGE, the Senator from Arizona (Mr. FANNIN) was added as a cosponsor of S. 4159, a bill to provide that the sex discrimination guidelines prescribed under title IX of the Education Amendments of 1972 do not apply to fraternities and sororities.

S. 4163

At the request of Mr. BAYH, the Senator from Georgia (Mr. TALMADGE) and the Senator from Texas (Mr. TOWER) were added as cosponsors of S. 4163, a

bill to amend title XI of the Education Amendments of 1972 to exempt certain fraternities and sororities from sex discrimination guidelines.

ADDITIONAL COSPONSORS OF RESOLUTIONS

SENATE RESOLUTION 422

At the request of Mr. BENTSEN, the Senator from Iowa (Mr. CLARK) was added as a cosponsor of Senate Resolution 422 relating to improving law enforcement efforts to control and prevent rape.

SENATE RESOLUTION 426

At the request of Mr. TUNNEY, the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of Senate Resolution 426 expressing the sense of the Senate with respect to certain oil and gas leases pursuant to the Outer Continental Shelf Lands Act.

AMENDMENTS SUBMITTED FOR PRINTING

FOREIGN ASSISTANCE ACT OF 1974—S. 3394

AMENDMENT NO. 1986

(Ordered to be printed and referred to the Committee on Foreign Relations.)

Mr. PERCY submitted an amendment intended to be proposed by him to the bill (S. 3394) to amend the Foreign Assistance Act of 1961, and for other purposes.

Mr. PERCY. Mr. President, last year during consideration of the foreign aid bill the Senate passed an unpretentious piece of legislation, now known as the Percy amendment, though adopted with the support of Senator HUMPHREY and other of my colleagues. In one sentence the amendment directed the Agency for International Development to administer our foreign aid effort in such a way as to promote the integration of women into the national economies of recipient countries, thus improving the status of women and assisting the total development effort.

This amendment, although simple, has reaped highly significant results. In September of this year AID issued the "Percy Amendment Policy Implementation Plan" directing all Agency development assistance plans to contain clear statements as to how women in developing countries will be involved in the development process and how the plan or proposal will benefit women and use their capabilities. More important, in the approval of all development plans and projects, strong preference will be given to those which provide for the effective utilization of women. International and voluntary organizations working with AID will also be encouraged to give specific attention to the role of women in development. Moreover, AID Washington bureaus and missions overseas have been instructed to collect information pertinent to the understanding of the role, status, and contribution of women in developing countries. Finally, our missions overseas will be required to report on the general progress of integrating women in the development process, highlighting effective projects.

The Percy amendment, however, is incomplete as it stands, for it affects only our bilateral aid programs. The United States also participates in and makes substantial contributions to multilateral aid programs such as those supported by organizations like the World Bank, the International Monetary Fund, and the United Nations, to name but a few. I am, therefore, introducing an amendment today to reinforce this amendment and make U.S. policy where women's equality is concerned consistent regardless of whether we are dealing with bilateral or multilateral aid programs. This amendment would direct our representatives in those international organizations of which we are a member to carry out their duties so as to encourage and promote the integration of women into the national economies of member and recipient countries and into professional and policymaking positions within those organizations.

Mr. President, I offer the amendment for the consideration of my colleagues, for the integration of women into the national economies of countries around the world deserves serious consideration. Equity and equal opportunity should be basic to the economic and social development process of all countries.

SUPPLEMENTAL APPROPRIATIONS, 1975—H.R. 16900

AMENDMENT NO. 1987

(Ordered to be printed and to lie on the table.)

Mr. PERCY submitted an amendment intended to be proposed by him to the bill (H.R. 16900) making supplemental appropriations for the fiscal year ending June 30, 1975, and for other purposes.

AMENDMENT NO. 1988

(Ordered to be printed and to lie on the table.)

Mr. MONDALE (for himself, Mr. HUMPHREY, Mr. DOMINICK, and Mr. WILLIAMS) submitted an amendment intended to be proposed by them jointly to the bill (H.R. 16900), supra.

ADDITIONAL COSPONSOR OF AN AMENDMENT

AMENDMENT NO. 1981

At the request of Mr. JOHNSTON, the Senator from New York (Mr. JAVITS) was added as a cosponsor of amendment No. 1981, intended to be proposed to the bill (H.R. 16900) making supplemental appropriations for the fiscal year ending June 30, 1975, and for other purposes.

NOTICE OF HEARINGS ON THE NEIGHBORHOOD SCHOOL ACT

Mr. PELL. Mr. President, during our debate on the elementary and secondary education bill, Public Law 93-380, the Junior Senator from Florida (Mr. CHILES) offered as an amendment, the substance of S. 503, the Neighborhood School Act of 1972. After discussing the amendment, I suggested that we put it aside so that the Subcommittee on Education could give it consideration through hearings.

Therefore, I am very pleased to announced that the Subcommittee on Education, on December 10, 1974, will have hearings on S. 503, the Neighborhood School Act of 1972. All those who wish to appear at this hearing should contact Stephen J. Wexler, counsel, Subcommittee on Education, room 4230, U.S. Senate, Washington, D.C. 20510, 202-225-7666.

NOTICE OF HEARING—CLOSURE OF UNDERGROUND COPPER MINES

Mr. METCALF. Mr. President, the Anaconda Co. has announced plans to close its underground copper mines in Butte, Mont. This action will have a disastrous impact on the miners involved, their families, and the economy of Montana.

Because of my deep concern about this situation, the Subcommittee on Minerals, Materials, and Fuels will hold a hearing on the Anaconda Co.'s plans on November 25. We have asked the company to explain the reasons for its plans. Montana Gov. Thomas Judge will testify on the probable impact of the company's actions on Montana. We have also asked exports from the Department of the Interior to testify about general conditions in the copper mining industry.

We want to determine if Anaconda's proposed shift away from underground mining is based on the particular circumstances of the company and the nature of the ore body involved or if it is indicative of general trends in the copper mining industry. We are equally concerned about the potential long-term social, economic, and environmental implications of elimination of underground copper mining. We want to identify any needs for new mining and/or processing technology, more trained personnel, or new sources of ore, such as deep ocean mining.

The hearings will begin at 10 a.m. on Monday, November 25, in room 3110, Dirksen Senate Office Building. For further information call Mike Harvey, special counsel, Subcommittee on Minerals, Materials, and Fuels, 202-224-1076.

NOTICE OF WITNESSES TO TESTIFY AT HEARINGS ON REGULATORY REFORM

Mr. ERVIN. The Committee on Government Operations will hold hearings on the following bills:

S. 4145, which would establish a National Commission on Regulatory Reform; S. 3604, the Federal Agency Efficiency Act; S. 704, the Regulatory Agencies Independence Act; and, S. 770, the Consumer's Information and Counsel Act, and others.

The hearings will be held in room 3302, Dirksen Senate Office Building, on Thursday, November 21; Friday, November 22; Monday, November 25; and Tuesday, November 26. The hearings will begin at 10 a.m., except that on November 22, the hearings will begin at 9:30 a.m.

do the job that needs doing. The federal government should not be expected to bail out the railroads even to the extent of safety needs at taxpayer expense. However, if there were less government economic regulation of railroads and the transportation industry in general, sound business practice might provide the money to do the job, while competition might provide the impetus.

IS THE UNITED NATIONS RELEVANT ANY MORE?

HON. ROBERT J. HUBER

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 20, 1974

Mr. HUBER. Mr. Speaker, recent years have seen the United Nations change a great deal. We have witnessed the expulsion of our friend the Republic of China. We have seen an attempt to exclude South Africa entirely. The latest sad episode was the giving of a podium to a terrorist leader—Yasir Arafat. A former delegate to the U.N. and also the former Governor of Virginia, Colgate W. Darden, Jr., has suggested that now may be the time to abandon the United Nations and find some other way to maintain world peace. Former Governor Darden's speech at the Virginia Military Institute, in turn sparked an editorial in the Richmond Times-Dispatch of this same subject. Both items from that paper of November 12 and 14, 1974, respectively, follow for the edification of my colleagues:

DARDEN PROPOSES REEXAMINING U.N.

LEXINGTON.—Former Gov. Colgate W. Darden Jr. said Monday the United Nations should be abandoned and some other way found to maintain world peace if the U.N.'s structure cannot be changed to "bring about a reasonable balance between the members."

"To achieve world peace, it is my thought that some form of collective action offers still the best hope," Darden told the Virginia Military Institute corps of cadets. "I do not believe that world government can be made to work."

But, he added, "I'm afraid the United Nations offers little real hope.

"The structure of the present organization should be reexamined, and if it cannot be revamped so as to bring about a reasonable balance between the members, it should be abandoned and some other plan devised."

In the meantime, Darden said, "it is imperative that the United States remain strong militarily and resolute in its determination to protect her interests throughout the world. It is my deeply held belief that only the strong will remain free in the world in which we live."

Darden, who served as governor throughout World War II, came to VMI to receive the New Market Medal, the institute's highest award.

The award was presented during Founders Day ceremonies marking the 135th anniversary of the institute.

ABANDON THE UN?

Normally when an organization is not serving a useful purpose, the answer is to reform it or close up shop.

But suggestions that this standard be applied to the United Nations are usually dismissed as the blathering of right-wing extremists.

As the actions of a UN General Assembly controlled by the Third World-Communist bloc have become ever more bizarre, however, thoughtful Americans are gradually being forced to rethink the question of whether the UN any longer has a reason or a right to exist.

Yesterday's appearance-by-invitation before the General Assembly of Yasir Arafat, the Palestinian terrorist leader, is just one more cause for renewed reflection. When last observed before opening the world forum to Arafat, plotter of hijackings, kidnappings and murders, and unelected representative of a state that doesn't exist, the General Assembly was closing its forum to one of its charter member-states, South Africa.

Former Virginia Gov. Colgate W. Darden Jr., for one, thinks it is time to start thinking the once-unthinkable: Maybe the UN should be abandoned. Unless it can be restructured into an effective, balanced organization offering real hope for solution of world problems, that should be the case, he told Virginia Military Institute cadets Monday.

Mr. Darden, who was this state's World War II governor and U. S. representative to the UN General Assembly in 1955, believes in international cooperation. If the UN is scuttled, an attempt should be made to put something better in its place, in his view.

Some form of collective action remains the "best hope" of establishing an enduring peace, but, realistically, the United States must continue to have a strong military and a strong will to protect its freedoms and its vital interests into the indefinite future, he added.

Mr. Darden's timely observations on the state of the UN ought to stimulate worthwhile debate as to whether America should continue to furnish refuge to a world organization that seems to have lost its moral and intellectual compass.

THE VETO OF THE FREEDOM OF INFORMATION ACT AMENDMENTS

HON. EDWARD R. ROYBAL

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 20, 1974

Mr. ROYBAL. Mr. Speaker, I rise to support the override of the President's veto of H.R. 12471, the Freedom of Information Act amendment as an important step to ending arbitrary and capricious Government secrecy.

Public confidence in Government is probably at the lowest level in our Nation's history. At least a part of the loss of confidence can be traced to the pervasive secrecy in which Government agencies attempt to shroud their activities.

In 1966, Congress passed the Freedom of Information Act to insure that the citizens of this country have access to basic nonclassified information concerning activities undertaken by our Government's executive agencies. Since that time, the agencies have established a number of impediments to circumvent the intention of Congress.

The major provisions of H.R. 12471 would remove these impediments and reassert the intention of Congress as stated in the original legislation.

First, the bill provides for public access to records on the basis of reasonable description of the document rather than requiring a specific title or file number as is presently the case in many agencies.

Second, it provides that an agency must respond to a citizen inquiry within 10 days of the request. If the agency refuses to furnish the requested information and the citizen appeals that decision, the agency must process the appeal and render a decision within 20 days.

Next, the bill provides that courts can conduct an in camera review of documents that have been classified as secret to determine whether the classification was proper under the prevailing statutes and regulations.

Finally, in those cases where the courts determine that Government personnel have arbitrarily or capriciously withheld records, the Civil Service Commission must conduct an investigation to determine if disciplinary action is warranted.

It is unfortunate that at this time when openness in Government is so crucial, the President has seen fit to veto the bill. It is time to reverse our propensity for executive branch secrecy by enacting this bill. Upholding the veto would only continue to sanction the Government's policies of withholding information that should be made public.

WHAT THE ELECTIONS MEAN

HON. BURT L. TALCOTT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 20, 1974

Mr. TALCOTT. Mr. Speaker, political pundits throughout America have been studying the outcome of the election of November 5 with each formulating their own theories on the results. The products of this brainstorming are diverse and too often merely confirm the preconceived bias of the theoretician.

It was refreshing, therefore, to read an editorial of Mr. Tom Nash which appeared in the Seaside Post News-Sentinel, a newspaper serving the 12th District of California, which presented some unembellished facts. I commend this article to my colleagues:

WHAT THE ELECTIONS MEAN

(By Tom Nash)

The election of officers for the various offices is behind us with most of us being elated over the outcome (and I personally think this is premature), and some of us with deep regret.

Differences are being patched up, and new plans are being implemented to battle inflation, the number one problem facing the nation. New ideas to combat the apathy of the American people to insure their involvement in their government.

It was truly amazing the total number of registered voters who stayed away from the polls, stating that their vote didn't count. The apathy that has been shown clearly reveals that the American people are totally disgruntled with the two major parties.

The Republicans lost favor behind the Watergate situation. The Democrats continued to belabor the point, aided by the press, to such an extent that most people became bored to tears, thereby creating a dangerous condition for the present form of government that has made this country the greatest country in the world.

So much noise and bandying of words almost led this country to a one party system which could have caused a dictatorial form

of government that could have wrecked havoc with our constitutional form of government, yet we sat at home and refused to intercede by casting our ballot for what we thought was right.

The free press has been given an even greater responsibility now than ever in the history of the United States. The responsibility of being a watchdog to insure that the American people be kept abreast of what is going on in Congress.

Already one of the labor publications has come out with the following statement:

"The Nation needs a creative and responsive Congress that will cooperate with the new President when it feels he is on the right course, but be strong enough to shape needed legislation itself when the President's programs are inadequate."

On the surface this sounds like a good statement, but can't you see the imposed threat?

The Republican party MUST begin their recruitment program immediately, and upermost on their program must be the re-education of the masses. They must recruit many new faces, and from these must come strong leadership to shape the plans for balancing the scales in 1976.

There is no doubt in anyone's thinking that with the Congress being dominated by the Democrats, a Republican President will catch hell trying to implement any programs through the Congress. Yet the blame for the failure will lie at his doorstep, just as it has been in the past.

The best we can hope for, at this point in time, is that we can survive the next two years without going to war.

The country clamored for a change. The country received their change, now let us see if it was for the best, or was it just jumping out of the frying pan into the fire.

AN AMENDMENT TO RATIONALIZE THE DATING POLICY ON GPO PUBLICATIONS

HON. DONALD M. FRASER

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 20, 1974

Mr. FRASER. Mr. Speaker, I am sure that my colleagues have shared my annoyance at finding that many materials issued by the Government Printing Office contain only obscure, hard-to-find references to the date of publication. This creates needless difficulty for congressional staff members and other researchers, who often must leaf through an entire GPO document before discerning whether it is current or out of date. Persons compiling bibliographies have also complained about the difficulty in finding dates of publication in GPO documents. Clearly, a system which specifies a uniform location for the date of publication in all GPO documents is in order. I, therefore, have introduced the following bill:

A bill to amend title 44, United States Code, to require that the date of publication of any material printed by the Government Printing Office, or of any material authorized to be printed under chapter 5 of that title, appear on the first page of the material

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 5 of title 44, United States Code, is amended by adding at the end thereof the following new section:

"§ 518. Date of publication to appear on first page.

"The date of publication of any material for which the printing is done at the Government Printing Office, or which is printed pursuant to section 502, 503, or 504 of this title, shall appear on the first page on which there is printing in the material.".

SEC. 2. The chapter analysis for chapter 5 of title 44, United States Code, is amended by adding at the end thereof the following new item:

"518. Date of publication to appear on first page.".

SOCIALIZED MEDICINE—THE CONSTITUTIONAL PROBLEMS

HON. EARL F. LANDGREBE

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 20, 1974

Mr. LANDGREBE. Mr. Speaker, perhaps the aspect of the debate about socialized medicine that receives the least attention is the problem of the constitutionality of such a program of fedmedicine. I believe that this lack of interest in the problem of the constitutional basis for fedmedicine is due to the prevailing opinion in this country that the people are and ought to be rulers. Such an opinion leads logically to disinterest in the Constitution and avid interest in public opinion polls as the proper guide for legislative action. For that reason we are regaled with the latest news from the pollsters about the public's feeling about the "health-care crisis" and the proposed "cures." Government by public opinion is precisely what the founders of the American Nation sought to avoid. They recognized that there is not, nor ought to be, any unlimited power on Earth, so they established a government limited by the Constitution. The Constitution, as any reader of the Federalist would know, was designed to limit the powers of government so that no single man nor group of men can use the government to achieve any ends they desire. The limitations apply as much to the will of a majority as to the will of one man. In the basic questions of government, counting noses is to have as little place as sovereign degrees by a king.

But our modern politicians—and I am afraid too many of the American people themselves—tend to think that majorities do make right, that if the people want it, they should get it and get it when they want it. I disagree. The tyranny of the majority—for it is a tyranny when its power is unlimited—can be as oppressive and as lethal as the tyranny of one man or a small group of men. Unlimited power in the hands of any man will result in a limited life expectancy for other men. In a democracy, the majorities are always changing—one may be in a majority one day and in a minority the next. Far from curbing the appetite for power, as some have suggested, this continual changing of the majorities would result in an increasingly fierce war of everyman against everyman, as each struggled to impose his viewpoints on others. The result would be that out of this civil war of pressure groups there would emerge one group so powerful that no one would be able to oppose it effectively. This is the path from unlimited democracy to unlimited dictatorship. In both forms of government the constant factor is the unlimited nature of the power that is possessed by the ruler, whether that ruler be a majority or a single man. The emergence of the dictator will act as a curb on the appetite for power in some people and will probably be welcomed by most of the people, for it will stop the chaotic conditions that prevail in such an unlimited democracy.

Right now we are seeing the expansion of the civil warfare of democracy by pressure groups and politicians intent upon socializing our still private medical care system. The struggle will not end until: First, socialized medicine is a reality; or second, we return to the concept of limited government and recognize the Constitution, not the Gallup poll, as the source of authority in our system of government. If the first of these things happens, then our descent into a totalitarian society—a society in which the government has unlimited, total power, is guaranteed. However, if we return instead to the idea of a limited government, then we will not be forced with the prospect of socialized medicine and the totalitarian State. This is because the Constitution does not grant the central government the authority to intervene in health care in this manner. Anyone who pretends to see a constitutional justification for socialized medicine or national health insurance has a very vivid imagination. Those people who can see justification for their Socialist programs in the Constitution are usually the same people who accuse conservatives of imagining Communists under every bed. They attribute their powers of imagination to everyone else, particularly to those with whom they disagree. If there is a constitutional justification for socialized medicine, let the proponents of fedmedicine point it out. If there is no constitutional justification for socialized medicine, then let the proponents of fedmedicine keep silent—or let them say publicly that they do not recognize the Constitution as the basis of this Government's authority and that their programs are aimed at destroying the Constitution.

I suspect that they will not do the latter, for it would make unmistakely clear the antifreedom bias of the proponents of socialized medicine. I believe that they will do what subverters of governments have always done: claim that they are acting within the established and legitimate order. The proponents of fedmedicine will claim constitutional justification for their programs-probably the "general welfare" clause of the Constitution. Unfortunately, such a claim must be based upon misrepresenting of the meaning of the clause, and an appeal to ignorance of what the meaning of the clause is, an ignorance that apparently reaches to the highest levels of government. The proponents of fedmedicine would like everyone to believe that the "general welfare" clause which appears in article I, section 8 of the Constitution is an independent grant of power and above the powers enumera-

proclamation of independent Latvia, their 56th anniversary. The depressing fact is, however, that since 1940 Latvia has observed this anniversary under an oppressive, unwanted Communist rule. The passing of this anniversary means yet another year of living on the hope that some day their country will be free again. It has been said of these people that "those who live in their homeland have no freedom, and those who live in freedom have no homeland." I would hope that the United States in negotiating with the U.S.S.R. would continue to seek guarantees of human rights for Latvians and other Communist-dominated countries, and perhaps, eventually, a return of their freedom.

FREDA PAYNE

HON. THOMAS M. REES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 20, 1974

Mr. REES. Mr. Speaker, it is with pleasure that I take this opportunity to call to the attention of my colleagues to a woman who, in addition to being a great entertainer, should be commended for being a great humanitarian as well. I speak of one of the more important young American entertainers to achieve stardom in the past few years, a fellow Californian, Freda Payne.

All too often in the entertainment world, success and recognition take their toll on the human side of the performer. Ms. Payne is an exception. Although most Americans and indeed many music lovers throughout the world know of Ms. Payne's achievements and artistry through her personal appearances, performances on television and through her fine recordings, very few people have learned of her selfless and untiring efforts on behalf of many humanitarian causes, such as for the battle against sickle cell anemia, as well as for the March of Dimes. I would personally like to extend my deep admiration and respect to Ms. Payne for having contributed so much to ease the hardship of human beings in the world.

As an indication of the extent of Freda Payne's efforts, earlier this year, she was named a Dame of Honour of the Knights of Malta, internationally recognized as one of the foremost organizations devoted to raising funds for the needy, the oppressed and the stricken.

In being named for this great honor, Ms. Payne became one of the few women—and the first black woman—to achieve this recognition.

I am certain that many of my colleagues here are familiar with the outstanding nature of the recordings Ms. Freda Payne has produced during the recent past. Needless to say, she has brought the American public and the international music-minded public great enjoyment in the past several years with her dynamic vocal style, on recordings, in supper clubs, on television and in concerts.

Althogh Freda Payne was born in Detriot, and began her musical training in that city, she now makes her home in the State of California, and has truly brought a great deal of pride to all those who reside in our State.

Mr. Speaker, may I say that it is a honor for me to lead the applause for this great woman and entertainer. Let the record show that this Congress has recognized and recommended Freda Payne for her outstanding efforts in behalf of those less fortunate than ourselves both at home and throughout the world.

FREEDOM OF INFORMATION ACT

HON. JAMES C. CORMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 20, 1974

Mr. CORMAN. Mr. Speaker, today I would like to share with my colleagues an editorial which was published in the Los Angeles Times on October 21, 1974. I believe that it is of special interest to my colleagues and makes an excellent case for overriding the President's veto.

The editorial follows:

FORD'S ALARMIST VIEW ON SECRECY

Vast government departments routinely sit on information that the public should have. A bias toward secrecy is a natural tendency in the bureaucracy.

The cold war that followed World War II provided a magic formula for censorship. It was "national security," but the security involved was often the security of a department to be free from public inspection.

In response, Congress eight years ago passed the Freedom of Information Act. Its intent was to enforce greater access to information from government. The law brought some improvement, but it was not as effective as it should have been. Its operation was impeded by bureaucratic delay, heavy costs of court action to force disclosure, and excessive charges levied by agencies for providing requested information.

Last year, a U.S. Supreme Court decision revealed a major weakness in the act. The court ruled that, under the law, the courts had no power to go behind a "classified" stamp on material. If it was classified, it was secret.

Earlier this month, Congress sent to President Ford's desk a bill to strengthen the 1966 law. The measure set time limits for agency response to requests for information. It allowed courts to order the government to pay the legal costs of persons winning suits against government departments under the act. And it permitted court review of classified information to determine whether the material sought under the act was properly classified.

In vetoing the bill Thursday, Mr. Ford took particular exception to this provision, asserting in our opinion, a thoroughly mistaken and alarmist view that the courts could brush aside even "a determination by the secretary of defense that disclosure of a document would endanger our national security." That is not the intent of the law and, if history is any guide, that certainly will not be the result. The intent of Congress is to stop the abuse of classifying information that by any rational standard cannot be remotely connected to national security. If there is any reasonable basis to uphold such a classification, it would be difficult to imagine that a court would rule otherwise. If that occurred, the appellate process is a sure safeguard.

Congress should override the President's veto.

WE GAVE THOUSANDS BACK TO THE NKVD

HON. EDWARD J. DERWINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 20, 1974

Mr. DERWINSKI. Mr. Speaker, at a time when Communist pressures in the Middle East are more threatening than ever and the pressures of other free world nations, in addition to Israel continue to create numerous foreign policy problems for us. The evaluation of current situations are certainly aided by objective understandings of pertinent history developments.

Thus, I was especially interested in an article by Nicholas Bethell in the Sunday, November 17, Washington Star-News, which I insert into the RECORD at this point, along with the followup article on the tragic aftermath of the Yalta Agreement:

WE GAVE THOUSANDS BACK TO THE NKVD

(By Nicholas Bethell)

On May 20, 1945, Winston Churchill sent a note to General Ismay, his personal chief of staff:

"What is known about the number of Russians taken prisoner by the Germans and liberated by us? Can you discriminate between those who were merely workers and those who actually fought against us?

"Could I have a further report on the 45,000 Cossacks of whom Gen. Eisenhower speaks? How did they come into their present plight? Did they fight against us?"

Churchill did not follow up his worried questions. On May 29 the Chiefs of Staff ordered Field Marshal Alexander to hand over the Cossacks who were in his territory to Stalin. In fact, repatriation of virtually all Soviets in allied hands had already begun without waiting for the order, on the authority of an explicit proviso of the Yalta Agreement.

Some extremely bloody operations took place. Repatriation, overall, was for many British soldiers the most disagreeable episode of the whole war.

* * * * *

During the Russian Civil War of 1918–20 some of the keenest fighters on the White side were Cossacks. At the beginning of this century there were five million of them in Russia.

Most of the Cossacks fought against the new Bolshevik authority and the Red Army. When the revolution was all over and the Reds had won, many thousands of Cossacks fled to the West.

It was among Cossacks most of all perhaps that hearts leapt when Hitler invaded the Soviet Union and for a time seemed likely to conquer it. Cossack leaders such as Vyscheslav Naumenko (the ataman of the Kuban Cossacks who in 1920 had been a major-general in the White forces) and the ataman of the Don Cossacks, Pyotr Krasnov, were quick to offer the Germans their services. In November 1943, the Nazis promised eventually to give the Cossacks back their traditional lands in the Soviet Union. Four months later they appointed Krasnov and Naumenko to a directorate of Cossack forces within the German army. Another member was T. I. Domanov.

* * * * *

In the dying months of the war an area around Tolmezzo in the Italian Alps, a few miles from the Austrian border, was occupied and used as a base for 35,000 Cossacks, half soldiers and half refugees.

At the end of April 1945, they loaded everything into their horse-drawn carts and within two days the whole community was camped near two Austrian villages, Mauthen and Kotschach.

On May 8, a Cossack delegation drove over the pass to Tolmezzo to tell British forces that they were ready to surrender unconditionally.

Zoe Polaneska, a 17-year-old Russian girl from a village near Odessa, a refugee but not a Cossack, remembers the kindness with which they were treated by the British when they arrived at Lienz, the surrender point.

After crossing the mountains we got little beds to sleep on and blankets and I thought, 'This can't be so bad.' And then I always remember, they gave us three cream crackers at breakfast time and I thought, 'This is better still.' And then they gave us white bread, pure white, we hadn't seen it for years. I thought, 'This is heaven!'

By May 16, according to British figures, there were 22,009 of Domanov's Cossacks under British supervision in the Drau Valley—15,380 men, 4,193 women and 2,436 children. A little further east British soldiers were guarding the 15th Cossack Cavalry Corps, commanded by a German, Lieutenant-General Helmut von Pannwitz, which had surrendered with its full strength of 18,792.

Brigadier T. P. Scott, commander of the 38th (Irish) Brigade, came across a regiment of Cossacks, about 400 men, who were in imminent danger of being attacked by a division of Bulgarians.

He went to see the Cossack commander, Prince zu Salm. The situation was quite simple, Salm said. The Cossacks would surrender to the British so long as they were sure that they would not be handed over to the Soviet Union. Scott told Salm that British prisoners were British prisoners, and on this understanding Salm surrendered.

The next day Scott's corps commander, Lieutenant-General Charles Keightley, was alarmed to hear that Scott had accepted the Cossacks' surrender and given them certain assurances. He told him of the Yalta Agreement.

"It was the first I'd heard of it," says Scott. Under this agreement, Keightley said, the Cossacks would probably have to be handed over to the Russians.

Scott says, "I told him I thought it would be a damn bad show if they were. I'd accepted their surrender and given my word. I got very hot under the collar about it."

In fact, in fulfillment of part of the Yalta Agreement, orders were that everyone of the Cossacks—man, woman and child—was to be handed back to the Soviet authorities, irrespective of individual wishes and by force if necessary.

Lieutenant General Keightley made it clear in an order dated May 24:

"It is of the utmost importance that all the officers and particularly senior commanders, are rounded up and that none are allowed to escape. The Soviet forces consider this as being of the highest importance and will probably regard the safe delivery of the officers as a test of British good faith."

Apart from moral scruples, the British face a practical difficulty. As soon as the Cossacks realized what was to happen to them they would fight.

Such considerations persuaded senior officers that trickery and deceit would have to be used. They ordered their subordinates to keep the Cossacks in a state of false security right to the last moment; only thus could the Cossacks be disarmed, loaded into vehicles and carried east without bloodshed and mass escapes.

On the morning of May 27, British soldiers were read an order from Brigadier Musson calling for the total disarmament of all Cossacks by 2 p.m. that day. British officers did their duty with such care and tact that no Cossack suspicions were aroused.

Shortly after the disarmament, Davies told the senior Cossack officers that all officers were required to attend a conference which would decide the future of the Cossack units. This was a lie. In fact, there was to be no conference at all. What was planned for the officers was not a discussion but an immediate transfer into the hands of the Soviet authorities.

The announcement caused the Cossacks some consternation. At last their doubts were beginning to grow, and the prospect of being handed over to the Soviets began to seem more fearsomely real.

It was the duty of British Major Rusty Davies, who was immensely popular with the Cossacks, to carry out the deception, and today he is amazed at how successfully he did it: "How the hell we lulled them into that, I just don't know."

Davies was told that the repatriation order came from higher authority and had been agreed between Stalin and Churchill at Yalta. What he was not told was that the agreement applied only to people who were Soviet citizens on the outbreak of war in September 1939. Under the agreement, many of the Cossacks gathered at Lienz, should not have been due for repatriation at all. Indeed, of the most senior officers, only Domanov had been a Soviet citizen in 1939.

An order was issued from General Keightley's headquarters which bore no resemblance to the terms laid down in the Yalta agreement. In this order, whole groups and nationalities were earmarked for repatriation: the Cossacks under Domanov at Lienz, the 15th Cossack Cavalry Corps under Gen. von Pannwitz, the units under Gen. Audrey Shkuro and Caucasians under Gen. Klych Girey. All members of these units were assumed to be Soviet, said the order, and "individual cases will not be considered unless particularly pressed." In other words, there was a presumption of "guilt." People were to be handed over to certain imprisonment and possible execution merely for failing to assert strongly enough that they were not Soviet citizens.

Interpreter Olga Rotovaya was present while the officers were being loaded on May 28: "Some of their wives were crying and begging me as interpreter to ask the British officers whether their husbands would return.

"Of course they will," the officer told me. "Try to calm the women down. There's no need for them to cry."

But the evening passed and there was no sign of the Cossack leaders. At eight o'clock Rotovaya was told that some British officers wanted an interpreter.

"Where are the Cossack officers?" she asked them.

"They're not coming back," they told her.

"Where are they?"

"We don't know. We are only British soldiers and we carry out the orders of our superiors."

Another woman interpreter, M. N. Leontieva, asked British officers the next day whether or not the Cossack officers were to be handed over. She was assured that this would not happen. They were safe and would be accommodated in good conditions.

Rusty Davies finally was given the most unpleasant task of breaking the truth:

They had a sort of camp committee and I asked the heads of this committee to come together. They were quite horrified when I told them, and I was petrified myself. You see, they had implicit faith in me. That's why I feel sick about the whole thing.

Zoe Polaneska, the young Russian girl, remembers, "I put my arms around my ears and said, 'No, I don't want to hear it.'"

Davies tried to soothe and reassure. He was authorized to tell them, he said, that the Soviet authorities had promised to treat all those who were repatriated humanely and decently. The Cossacks almost laughed at such naivete.

Davies remembers that some Cossacks brought an old woman toward him. She held out her hands and he could see that she had no fingernails. "The torturers of the NKVD—that's what you're sending us back to!" she told him through an interpreter.

British Lieutenant V. B. English was in command of a Royal Artillery detachment guarding the bridge over the river Mur where the transfer took place. He says he asked a Soviet officer what would happen to the Cossacks and was told, "The officers will be shot, but the ordinary soldiers will just be sent to Siberia."

It was two days before the bulk of the deportations were to start. A number of Cossacks and Caucasians disappeared into the neighboring hills during the ensuing few days.

But the vast majority, more than 20,000 people, decided to stay in the valley and resist the oder. Their officers were gone, so they elected a senior sergeant called Kuzma Polunin to be their temporary "ataman." Polunin addressed a petition to Alec Malcolm, commanding officer of the troops guarding the area. It began, "We Russians, Cossacks, who evacuated from Russia on our own will and who joined the German army not for the reason to protect the German interests, but bearing in mind exclusively the struggle against the Soviet Union, declare that our return to the Soviet Union is absolutely impossible. We prefer death than to be returned to the Soviet Russia, where we are condemned to a long and systematic annihilation." Many went on a hunger strike.

Davies told the Cossacks that if they resisted they would be loaded by force. Parents would be separated from their children. Surely they did not want that?

The special horror of the subsequent events at Lienz is that they involved some 4,000 women and 2,500 children and amount almost to an act of genocide, marking as they did the liquidation of a large part of the emigre Cossacks.

The affair was not discussed in the British or American press at the time. It suited both sides, the Soviet Union as well as the West, to keep the whole question of forcible repatriation quiet.

The former Cossack ataman, Vyacheslav Naumenko, has called June 1 'the day which, together with the world Lienz, is inscribed in letters of blood."

The Cossacks were human beings and, although they had no claim on the allies' loyalty, they had a right to expect correct, decent treatment from the army. It is on this basis that one examines British documents on the affair, only recently opened to public view.

Alec Malcolm wrote a report which begins:

At 0730 hours on June 1st I went with Major Davies to Peggetz Camp. . . . At the camp I saw a very large crowd of people, numbering several thousand, collected in a solid square with women and children in the middle and men around the outside. A body of 15 to 20 priests were assembled in one part of the crowd, wearing vestments and carrying religious pictures and banners. At 0730 hours these priests began to conduct a service and the whole crowd to chant.

The previous evening the priests had decided to summon Cossacks to a huge open-air service. At 6 a.m. the priests walked in procession around the camp, gathering people as they want, until by Davies' estimate there was a crowd of 4,000 gathered in a central